



dated 21 October 2021

Richmond Housing Partnership Limited

and

RHP Develop Limited

and

Hill Residential Limited

and

Hill Holdings Limited

**Deed of Variation to Agreement for Lease and Development
dated 8 October 2021**

in relation to land at Ham Close

Deed of Variation

dated 21 October 2021

Parties

- (1) **Richmond Housing Partnership Limited** (a Registered Provider registered with the Regulator of Social Housing with registration number L4279 and as a registered society as defined in Section 1 of the Co-operative and Community Benefit Societies Act 2014 with registration number 30939) and whose registered office is at 8 Waldegrave Road, Teddington TW11 8GT (**RHP**);
- (2) **RHP Develop Limited** (company registration number 11280666) and whose registered office is at 8 Waldegrave Road, Teddington TW11 8GT (**RDL**);
- (3) **Hill Residential Limited** (company registration number 04251718 whose registered office is at The Power House, Gunpowder Mill, Powdermill Lane, Waltham Abbey, Essex EN9 1BN (the **Developer**); and
- (4) **Hill Holdings Limited** (company registration number 04202304) whose registered office is at The Power House, Gunpowder Mill, Powdermill Lane, Waltham Abbey, Essex EN9 1BN (the **Guarantor**).

Introduction

- (A) The Parties entered into an Agreement for lease and development in relation to land at Ham Close on 8 October 2021 (the **Original Agreement**).
- (B) Since entering into the Original Agreement, a number of minor inconsistencies have been identified.
- (C) The Parties are entering into this Deed to rectify the said inconsistencies.

Agreed Terms

1 Definitions and Interpretation

- 1.1 Words defined in the Original Agreement shall have the same meanings in this Deed unless otherwise specified.
- 1.2 The interpretation provisions at clauses 1.2 -1.7 (inclusive) of the Original Agreement shall be deemed incorporated herein.

2 Variations

The parties have agreed that, as from the date hereof, the following variations are hereby incorporated into the Original Agreement:

- 2.1 In the definition of Architect, the words "RDL Works" shall be replaced with "Works".
- 2.2 In the definition of Community Facility/Facilities, the words "not less that 1266.5 square metres" shall be replaced by "not less than 1266.5 square metres".

- 2.3 In the definition of Developer Works the words "Developer Building(s)" shall be replaced with "those Dwellings to be developed by the Developer".
- 2.4 Clause 2.1 of the Original Agreement shall be deleted and replaced with:
- "2.1 All of the provisions of this Agreement (other than clauses 2.1-2.5, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 2.17, 3, 7, 9, 13, 20.1-20.10, 22.1, 22.2, 26.2, 26.3, 27, 28, 30, 34, 36, 40, 41-50 and the provisions of Schedule 1) only apply upon the Unconditional Date occurring."
- 2.5 Clause 6.2.2 of the Original Agreement shall be deleted and replaced with:
- "6.2.2 In relation to the CF Curtilage, RHP confirms and restates the terms of clause 30.14 of the Land Sale Agreement and shall permit the Developer licence to enter the CF Curtilage on the terms set out in clause 30.14 of the Land Sale Agreement and that the provisions of this clause may be enforced by the Council as anticipated by clause 30.14.3 of the Land Sale Agreement, and the Developer confirms and acknowledges that:
- 6.2.2.1 the Developer will comply with the terms of clause 30.14, and also with clause 4.2, of the Land Sale Agreement and that the same shall apply; and
- 6.2.2.2 the Council shall be entitled to enforce this clause 6.2.2 pursuant to the Contracts (Rights of Third Parties) Act 1999."
- 2.6 In the definition of "Makerlab" the words "not less that 185.2 square metres" shall be replaced by "not less than 185.2 square metres".
- 2.7 The word "Works" shall be inserted into the definition of Makerlab Longstop Date so that it reads "**Makerlab Works Longstop Date** means 18 months after the Makerlab Target Date".
- 2.8 In the definition of Makerlab Specification the word "Facilities" shall be replaced with the word "Facility".
- 2.9 Clause 6.1.1 shall be deleted and replaced with:
- "6.1.1 The parties agree that as a result of any changes to the Base Design in accordance with this Agreement, following the grant of Planning Permission the parties shall (acting reasonably) agree such appropriate changes as are necessary to the Building Lease and the Affordable Housing Underlease and the plans to be annexed thereto so as to reflect the appropriate extent of the Property (or Affordable Housing Units (as applicable)) and all appropriate rights and reservations as may be required in the context of the Development."
- 2.10 Clause 9.1.2 shall be amended to:
- 2.10.1 change the words "Community Facilities Works" to "Community Facility Works"; and
- 2.10.2 add the words "and the Makerlab" to the end of the clause.

- 2.11 In clause 9.3 the words, in the first line, "Community Facilities" shall read "Community Facility Works".
- 2.12 In clauses 12.4 the words, "Community Facilities" on the penultimate line shall read "Community Facility Works", and in clause 14.14 the words, "Community Facilities" shall read "Community Facility Works".
- 2.13 Clause 14.11.2 shall be deleted and replaced with:
- "14.11.2 fails to achieve Practical Completion of the Community Facility Works by the Community Facility Works Target Date (as extended by a Delaying Event in accordance with this Agreement) then the Developer shall pay to RDL within ten Working Days of a request by RDL to do so by way of liquidated damages the CF LADs Sum for each week or part week that Practical Completion of the Community Facility Works is delayed calculated from the Community Facility Works Target Date until the date on which Practical Completion for the Community Facility Works takes place **provided always** that if the Developer completes the Community Facility Works in stages and RDL (in its absolute discretion) accepts and takes beneficial occupation of any Community Facility or the Makerlab (whether or not actually so occupied), then the CF LADs Sum shall be reduced on a weekly basis by the same proportion as the relevant Community Facility or Makerlab (as applicable) taken into beneficial occupation by RDL and/or RHP. The parties acknowledge that neither RHP nor RDL is obliged to accept any Community Facility or Makerlab before Practical Completion of the Community Facility Works."
- 2.14 In clause 16.1.3 the words, "Community Facilities" shall read "Community Facility Works".
- 2.15 In clause 18.5.4 the word "as" shall be deleted from the end of the clause.
- 2.16 Clause 42.2 shall be amended to read:
- "42.2 to the Council;"
- 2.17 Schedule 1, paragraph 5.2 shall be amended to read:
- "...so as to allow the Construction Commencement Date for Phase 1 to be..."
- 2.18 In the heading to Appendix 9, "Stakeholder Protocol" shall be amended to read "Stakeholder Engagement Protocol".
- 2.19 The following cross references shall be updated:
- 2.19.1 in the definition of Makerlab Target Date the cross reference is to clause 14.9;
- 2.19.2 in the definition of RDL Variation the cross reference is to clause 16.1;
- 2.19.3 in the definition of RDL Works Longstop Date the cross reference is to clause 14.10 (not 14.9);
- 2.19.4 in the definition of Step In Period the cross reference is to clause 36 (not 35);
- 2.19.5 in clause 2.11 the cross reference is to clause 39 (not 38);

- 2.19.6 in each of clauses 2.15 and 27.1, the cross reference is to clause 28 (not 27);
- 2.19.7 in the definition of Community Facility Works Longstop Date the cross reference is to clause 14.10 (not 14.9);
- 2.19.8 in clause 38.6 the cross reference is to clause 38.5 (not 38.4);
- 2.19.9 in clause 38.7 the first cross reference is to clause 38.6 (not 38.5);
- 2.19.10 in clause 38.8 the cross reference is to clause 38.7 (not 38.6);
- 2.19.11 in Schedule 1, paragraph 1.4.2 the cross reference is to "this paragraph 1.4";
- 2.19.12 in Schedule 1, paragraph 4.3 the cross reference is to clause 28 (not 27);
- 2.19.1 in Schedule 2, paragraph 2.8 the clause cross reference is to clause 28 (not 27);
- 2.19.2 in Schedule 3, paragraph 2.11 the cross reference is to clause 18.6 (not 17.8).

3 Memorandum

3.1 The Parties have agreed to endorse the changes in this Deed onto the Original Agreement to reflect the above and a copy is attached at Appendix 1.

4 Continuing effect

Save as provided in and as varied by this Deed the terms of the Original Agreement shall continue to have effect.

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

Executed as a deed by affixing the Common Seal of **Richmond Housing Partnership Limited**) [Common Seal of the company]
 in the presence of:

Authorised Signatory

Authorised Signatory

Executed as a deed by)
RHP Develop Limited)
acting by [name of director], a director and)
[name of director or secretary], a director or)
its secretary)

Director

Director/Secretary

Executed as a deed by)
Hill Residential Limited)
acting by *Frank Miller*, a director and)
Greg Hill, a director or its secretary)

Director

Director/Secretary

Executed as a deed by)
Hill Holdings Limited)
acting by *Greg Hill*, a director and)
~~a director or its secretary~~)

Director

Director/Secretary

in the presence of:

witness

witness Name

Address

Amanda Miller

**The Power House
Gunpowder Mill
Powdermill Lane
Waltham Abbey
Essex EN9 1BN**

APPENDIX 1

Copy of the Original Agreement, endorsed with the changes in this Deed



dated

2021

Richmond Housing Partnership Limited

and

RHP Develop Limited

and

Hill Residential Limited

and

Hill Holdings Limited

Agreement for lease and development

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

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in relation to land at Ham Close

5 Aug and further updated 8 Sept

Agreement for lease and development

dated 2021

Parties

- (1) **Richmond Housing Partnership Limited** (a Registered Provider registered with the Regulator of Social Housing with registration number L4279 and as a registered society as defined in Section 1 of the Co-operative and Community Benefit Societies Act 2014 with registration number 30939) and whose registered office is at 8 Waldegrave Road, Teddington TW11 8GT (**RHP**);
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- (4) **Hill Holdings Limited** (company registration number 04202304) whose registered office is at The Power House, Gunpowder Mill, Powdermill Lane, Waltham Abbey, Essex EN9 1BN (the **Guarantor**).

Agreed terms

1 Definitions and interpretation

1.1 In this Agreement the following terms have the following meanings unless inconsistent with the context:

Affordable Housing Deposit means £1.00 (one pound);

Affordable Housing Land Price means 20% of Affordable Housing Package Price inclusive of VAT;

Affordable Housing Package Price means for each Phase together the Affordable Housing Land Price and the Affordable Housing Works Price inclusive of VAT and calculated in accordance with the matrix set out in Appendix 17;

Affordable Housing Works Price means the Affordable Housing Package Price less the Affordable Housing Land Price inclusive of VAT;

Affordable Housing Underlease means the underlease(s) of the Affordable Housing Units in a form to be agreed between RHP and the Developer (both acting reasonably) with any dispute as to the form and content of the Affordable Housing Underlease to be determined by an Independent Person pursuant to clause 28;

Affordable Housing Units means the residential accommodation constructed or to be constructed on the Estate as part of the RDL Works to be used as affordable housing (as defined in the National Planning Policy Framework);

Agreed Form means the form of document agreed in writing between RDL and the Developer acting reasonably, whether before, on or after the date of this Agreement;

AH LADs Sum means a weekly sum of £135 per week or part week for each Affordable Housing Unit for which Planning Permission has been obtained in accordance with this Agreement and forming the RDL Works;

AH LADs Commencement Date means the date falling 4 months after the RDL Works Target Date (as extended by a Delaying Event);

Appeal means an appeal to the Secretary of State in accordance with the provisions of Section 78 Planning Act against a refusal or deemed refusal or the non-determination of a planning application or the grant of a Planning Permission that does not satisfy the Planning Condition;

Application Design means the design which is the subject of the Planning Application and which will be developed from the Base Design in accordance with this Agreement;

Application for Payment means an application for payment in respect of the Affordable Housing Works Price and the CF Works Price due under this Agreement for Works properly completed (or any Retention due) since the previous Application for Payment (or in the case of the first Application, from the commencement of the RDL Works or in respect of the Community Facility Works from the CF Payment Trigger Date) and which must include:

- (a) a full breakdown of activities undertaken;
- (b) a deduction for: applicable Retention, any payments already made by RHP or RDL and any others sums properly deductible under the Agreement or at law;
- (c) any additions to the Affordable Housing Works Price of CF Works Price permitted in accordance with this Agreement;

Appointment(s) means the appointments of the Professional Team subject to RDL's and RHP's approval (not to be unreasonably withheld or delayed);

Approved Funder means any person whom the Developer enters into or has entered into any agreement with for the provision of finance and/or re-finance written notice of which has been given to RHP providing full contact details for the Funder provided that such person is not a Prohibited Person and shall apply both where there is a single lender or on the basis that the Approved Funder will hold its security by way of security agent for and on behalf of syndicated lenders;

Architect means bptw of 40 Norman Road, London SE10 9QX or such replacement architect(s) as the Developer may appoint in connection with the RDL Works from time to time subject to RHP's approval (not to be unreasonably withheld or delayed);

Base Design means the plans and drawings copies of which are attached at Appendix 6 and as may be varied in accordance with this Agreement;

Building Contract means the building contract(s) entered into between the Developer and the Contractor relating to the RDL Works, the Makerlab Works, the Developer Works and Community Facility Works which will be a JCT design and build 2016 contract and which contracts include the requirements of clause 30.6 of the Land Sale Agreement;

Building Lease means a lease of each Phase to be granted by RHP to the Developer for a term of 990 years substantially in the form set out in Appendix 8;

Building Lease Completion Date the Phase 1 Completion Date, the Phase 2 Completion Date or Phase 3 Completion Date (as the case may be);

Call-In means a call-in of a Planning Application by the Mayor or by the Secretary of State acting under section 77 or 79 Planning Act;

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

Certifier shall have the meaning given in the Collaboration Agreement;

CF Curtilage means the land shown yellow on the Plan at Appendix 16 (and for avoidance of doubt referred to as the CF Plot in the Land Sale Agreement);

CF LAD Sum means a weekly sum of £787 per week or part week for the Community Facilities forming the Community Facility Works (and which the Parties agree comprised £47 per week or part week for the Makerlab and £740 per week or part week for the Community Facility);

CF Payment Trigger Date means:

- (a) in the event clause 6.2.1 applies, the date on which a Start on Site is achieved in relation to the Community Facility Works; or
- (b) in the event clause 6.2.3 applies the date on which a lease of the Community Facilities is granted to RHP, or to the Council (as RHP's direction);

CF Plot means that part of the Estate on which the Community Facilities are to be constructed and as indicatively shown in the Base Design;

CF Works Fix Price means the sum at which the cost of the Community Facility Works is fixed as a result of the process in clause 9 and which shall not exceed the Maximum Price or such higher figure if there are additional sums payable by RDL occasioned by variations pursuant to clause 16 hereof;

CF Works Price means the costs properly due and payable to the Contractor under the Building Contract (on an open book basis) for the design and construction of the Community Facility to the Base Design up to the Maximum Price or such higher figure if there are additional sums payable by RDL occasioned by variations pursuant to clause 16 hereof and which shall pursuant to clause 9 be fixed and thereafter be the CF Works Fix Price;

Chargeable Development has the meaning ascribed to it in CIL Regulation 9 and which comprises the Estate;

CIL means Community Infrastructure Levy payable under the CIL Regulations;

CIL Liability means a sum equal to such liability or potential liability in relation to CIL for the Chargeable Development or any part or parts of it;

CIL Regulations means the Community Infrastructure Levy Regulations (2010/948) as amended by the Community Infrastructure Levy (Amendment) Regulations 2011/987 and the Localism Act 2011 and CIL Regulation means one of them;

Collaboration Agreement means the Collaboration Agreement of even date and made between (1) Richmond Housing Partnership Limited and (2) London Borough of Richmond upon Thames;

Collateral Warranties means together the Professional Team Warranties, the Contractor Warranty and the Sub-Contractor Warranties in the form at Appendix 4 (or such other form as may be approved by RDL and RHP) and with such amendments as are reasonably and properly required to regulate step in as between the Council, RHP and/or RDL and any Funder;

Commence has the same meaning ascribed to 'commencement of development' in Regulation 7 of the CIL Regulations;

Compensation Sum means the sum calculated in accordance with the formula below:

$$\text{Compensation Sum} = A - (B + C)$$

Where:

A = lower of

- (i) Market Value of the Property at the date of termination; or
- (ii) costs incurred by the Developer as at the date of termination (including all costs committed but not yet spent and for the avoidance of doubt including any Premium(s) paid and any Stamp Duty Land Tax paid on such Premium(s));

B = the reasonable costs incurred by RHP as a consequence of termination but excluding all recoverable VAT; and

C = any monies paid by RHP or RDL in consideration of the Affordable Housing Units or the Community Facility;

Community Facility/Facilities means the building or buildings to be constructed on the Property in accordance with the Planning Permission and as required in accordance with the Collaboration Agreement and which is not part of the RDL Works or the Developer Works and which as a minimum, will comprise 612.3 square metres net internal area, 796.5 square metres gross external area, together with external space together not less ~~that~~ than 1266.5 square metres (each as defined in the RICS Code of Measuring Practice

6th Edition)**Community Facility Specification** means the specification for the Community Facility Works as attached at Appendix 2C and as varied, altered, substituted and/or added to from time to time in accordance with the provisions of this Agreement;

Community Facility Works means the design and construction and rectification of defects of the Community Facility and the Makerlab in accordance with the Planning Permission and the Community Facility Specification and terms of this Agreement;

Community Facility Works Longstop Date means 34 months from and including the Construction Commencement Date on Phase 1 or as extended in accordance with clause ~~14.9~~14.10;

Community Facility Works Target Date means 16 months from and including the Construction Commencement Date on Phase 1 or as extended by any Delaying Event pursuant clause 14.8;

Conditions means the Standard Commercial Conditions of Sale (Third Edition);

Conditions Precedent means the Developer's Conditions Precedent and RHP's Conditions Precedent;

Conditions Precedent Longstop Date means 30 ^{September} ~~June~~ 2022;

Construction Commencement Date means in respect of each Phase the later of:

- (a) the date being six months after the Planning Condition Satisfaction Date; or
- (b) where the Vacant Possession Condition has not been satisfied by the Planning Condition Satisfaction Date, the date being six months after the Vacant Possession Satisfaction Date for the relevant Phase; or
- (c) the date of grant of the Building Lease for the relevant Phase;

provided always that in respect of Phase 1 the Construction Commencement Date must occur prior to 1 December 2022 and further provided that where the Developer commences construction on a relevant Phase (by undertaking the works comprising Start on Site but not otherwise) prior to such date (which it shall be entitled to do) the date on which it actually commences construction on that Phase shall be the Construction Commencement Date;

Construction Protocol means a protocol pursuant to which the Developer will carry out the Works as attached at Appendix 9;

Contractor means Hill Partnerships Limited (registered company number 02599073) or such other replacement contractor, subject to RDL's and RHP's approval (not to be unreasonably withheld or delayed), for the purposes of carrying out and completing the Works;

Contract Documents means together this Agreement the Schedule and Appendices;

Contract Rate means 4% above the base rate set by the Bank of England;

Contractor Warranty means the form of warranty to be entered into by the Contractor substantially in the form attached at Appendix 4 (or such other form as may be approved by RDL and RHP);

Council means London Borough of Richmond upon Thames;

Council Land means the land to be acquired by RHP from the Council pursuant to the Land Sale Agreement;

Council's Representative means a duly qualified representative of, or on behalf of the Council that the Council may appoint in connection with the Community Facility Works;

Counsel means leading counsel experienced in planning matters similar to the Development of not less than ten years call;

Cover Note means written confirmation in the form of the standard cover note (or equivalent) issued by the Latent Defects Insurer that the relevant parts of the RDL Works, the Developer Works, Makerlab Works and Community Facility Works (as the case may be) has the benefit of the Latent Defects Insurance;

Dangerous Substances means any substance (whether in the form of a solid liquid gas or vapour) the presence generation transportation storage treatment use of and/or disposal of which (whether alone or in combination with any substance) gives rise to a risk of causing harm to human health comfort or safety or harm to any other living organism or causing damage or harm to the environment and/or any property and/or giving rise to any obligation to remove remediate make safe or harmless imposed by any environmental authority;

Decision Notice means a grant of Planning Permission pursuant to a Planning Application and/or an Appeal and/or following a Call-In and a Planning Refusal;

Deed of Adherence means the Deed of Adherence entered into in accordance with the Collaboration Agreement and in the form attached at Appendix 3;

Deed of Variation means the deed of variation to the Building Lease in the form at Appendix 14;

Defects mean all and any outstanding works, defects, shrinkage, faults (including those caused by frost, heat or similar), snags and/or omissions in the Works;

Defects Liability Period means the period of 24 months from and including Practical Completion of the last Section of the RDL Works on a Phase or Community Facility Works or Developer Works on a Phase (as applicable);

Defects Protocol means the protocol set out in the RDL Works Specification;

Defects Response Times means those periods set out in the Defects Protocol;

Delaying Event means any delay caused by:

- (a) an event for which the Contractor is entitled to an extension of time under the Building Contract save where any delay is the result of any

breach, impediment, prevention or default (whether by act or omission) by the Developer or any of its employees, contractors, sub-contractors and/or agents provided always that the Developer has used reasonable endeavours to minimise any disruption or delay;

- (b) a RDL Variation is incorporated in to the Works which causes delay to the Works and entitles the Contractor to an extension of time under the Building Contract;
- (c) the opening up of the Development where the inspection or testing shows that the materials, goods or work are in accordance with this Agreement;
- (d) any material delay by RHP or RDL in granting or otherwise withholding approval where provided for in this Agreement Provided That all information that RHP or RDL require to consider such approval was provided;
- (e) any delay arising as a result of any breach, non-performance or non-observance by RHP or RDL of its obligations in this Agreement;
- (f) any Town Planning or Building Regulations refusal or restriction which is to be obtained by or for which compliance with is the responsibility of RHP;
- (g) any delay by a statutory undertaker or service provider in entering into agreements or to install or remove equipment to accommodate and/or serve the Development;
- (h) a Pandemic Related Matter; and
- (i) any delay by the Council in complying with its obligations under the Land Sale Agreement and/or the Collaboration Agreement (including but not limited to the granting vacant possession of any part of the Estate and/or the provision of consents and approvals by the Council including as to any approval of a Phase Variation (as the same is defined in the Land Sale Agreement));

Provided That

- i any extension pursuant to Delay Events (d) and /or (e) shall not exceed 2 years; and
- ii if more than one of the events above have caused or contributed to the same delay, there shall only be one extension hereunder, that is to say there shall be no double-counting of extensions of time hereunder.

Deleterious Materials means any materials that:

- (a) do not conform with UK Designated Standards or codes of practice (or where no such standards exist do not conform which the British Board of Agreement Certificate); and/or

- (b) are generally known to be deleterious in the particular circumstances in which they are specified for use and/or used to health, safety and/or the durability of the buildings and/or structures; and/or
- (c) do not comply with the guidance by the British Property Federation and British Council for Offices current to the time of undertaking the applicable Works entitled 'Good Practice in the Selection of Construction Materials'; and/or
- (d) anything specifically referred to as deleterious in the Fire Strategy;

Design Evolution Protocol means a protocol pursuant to which the Developer will work with RHP to develop the Base Design into the Application Design as attached at Appendix 9;

Developer's Conditions Precedent means:

- (a) the Planning Condition; and
- (b) the Viability Condition; and
- (c) the Title Insurance Condition; and
- (d) the Stopping Up Condition;

Developer's Solicitors means DAC Beachcroft LLP of 25 Walbrook London EC4N 8AF (reference Hill164/1554771) or such other solicitors notified by the Developer to RHP from time to time;

Developer Works means the design and construction and rectification of defects of the those Dwellings to be developed by the Developer ~~Building(s)~~ in accordance with the Planning Permission and the Developer Works Specification and terms of this Agreement;

Developer Works Specification means the specification for the Developer Works as attached at Appendix 2B to include leaseholder options as to kitchens, bathrooms finishes etc. as varied, altered, substituted and/or added to from time to time in accordance with the provisions of this Agreement;

Development means the development on the Estate of the RDL Works, the Community Facility Works, the Makerlab Works and the Developer Works;

Development Principles means the principles set out in clause 2 of the Collaboration Agreement;

Discharge Document means a Land Registry Form DS1, DS3 or a consent to dealing to permit the grant of the Building Lease free of any financial charge;

Documents means all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed by or on behalf of the Developer in the course of or as result of preparing the Planning Application and the carrying out the RDL Works and/or the Developer Works

and/or the Community Facility Works, Makerlab Works whether in existence or to be made or produced and including all amendments additions and all designs ideas concepts and inventions contained in them;

Dwelling(s) means any house, flat or maisonette to be constructed as part of the Works;

Environmental Information means (if any) the contents of any reply and other written material or information disclosed or communicated to RHP or other professional consultants employed by RHP by or on behalf of the Developer with regard to the condition of the Property and/or the presence of any Dangerous Substances in or about the Property in or about any structure and/or concerning the effect or likely effect of any remedial work which has been or should have been carried out;

Environmental Law means any European Community or UK law legislation statutory instrument regulation or the like and any rules decision or requirement of the common law in each case relating to:

- (a) the protection of the environment;
- (b) matters affecting the health or wellbeing of humans and/or any other living organism or eco system and/or any harm or damage to property; or
- (c) the disposal spillage release omission or migration of Dangerous Substances;

Environmental Liabilities means any liabilities fines costs expenses and the like suffered or incurred now or in the future under Environmental Law relating to the Property;

Estate means the land within RHP's ownership and registered under the Title Numbers and also the Council Land together as shown edged red on the Plan 1 at Appendix 1 and to include any additional land that the parties agree should be included;

Financial Model means the Developer's Financial Model the version of which based on the Base Design at the date of this Agreement is annexed at Appendix 7 and to be updated in accordance with this Agreement;

Final Financial Model means the Financial Model submitted by the Developer pursuant to clause 2.4;

Financially Viable means that the Development is financially viable by reference to an update to the Financial Model and which demonstrates that:

- (a) that the Developer's estimated gross profit is equal to or exceeds 17.51% of the overall income arising from the Development; and
- (b) the Developer is likely to achieve a ROCE of no less than 32.59%;

Fire Strategy means the fire strategy as set out in Appendix 15 or as otherwise agreed with RDL;

First Payment means the sum of £9,575,000 (exclusive of VAT (if any)) credit being given for the Costs payment made pursuant to clause 49 hereof;

Funder means an Approved Funder providing finance to the Developer in respect of the Development;

Golden Brick means in relation to the grant of each Affordable Housing Underlease:

(a) where it comprises houses, that the foundations are at least one level of Brick Course above foundation level of the houses to be constructed; and

(b) where if comprises flats the works are at ground floor slab,

so as to comprise a partially constructed dwelling as referred to in paragraph 4.7.4 of HM Revenue and Customs Notice 708 (November 2011);

Group Entity means any company or entity being a subsidiary parent or a subsidiary of the parent company or entity of RHP;

Hatch House means the property and curtilage known as Hatch House shown on the plan annexed at Appendix 11 and identified as "Hatch House";

Housing Unit Transfer means the freehold transfer of an Practically Completed individual Dwelling with full title guarantee where the Developer Works comprises a house and the form of transfer shall be agreed between RHP and the Developer (both acting reasonably) following the Unconditional Date;

Independent Person means a person with the attributes described in clause 28;

Insolvency Event means in relation to any party, any of the following events:

(a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;

(c) it applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;

- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed over it (being a company, partnership or limited liability partnership);
- (f) the holder of a qualifying floating charge over its assets (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets;
- (h) being an individual, it is the subject of a bankruptcy petition, application or order;
- (i) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within ten working days;
- (j) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (i) above (inclusive);
- (k) in relation to a company (or if more than one company then any one of them): or
- (l) in relation to a party who is a partnership, the dissolution thereof;

LADs Sum means the AH LADs Sum or the CF LADs Sum (as applicable);

Landscape Architect means such landscape architect that the Developer may appoint in connection with the Works and subject to RDL's approval (not to be unreasonably withheld or delayed);

Latent Defects Insurance means a policy of latent defects insurance to be provided by the Developer in respect of the RDL Works, the Makerlab Works and the Community Facilities and which shall be NHBC 10 + 2 years cover (to include Developer insolvency cover, professional fees and contamination in each case with no excess) or such other reputable provider of insurance policies in the London insurance market as RHP and RDL shall agree (acting reasonably and without undue delay);

Latent Defects Insurer means the party providing Latent Defects Insurance;

Latent Defects Insurer's Requirements means the requirements of the Latent Defects Insurer;

Land Sale Agreement means the Land Sale Agreement entered into between (1) RHP and (2) the Council in accordance with the Collaboration Agreement;

Local Planning Authority means the local planning authority for the area in which the Estate is located;

Makerlab a space of not less than 107.4 square metres net internal area, 139.6 square metres gross external area, together with external space together not less ~~than~~ 185.2 square metres (each as defined in the RICS Code of Measuring Practice 6th Edition) for volunteers to undertake recycling, DIY and craft activities for the benefit of local people;

Makerlab Works Longstop Date means 18 months after the Makerlab Target Date;

Makerlab Specification means the specification attached as part of the Community ~~Facilities~~Facility Specification;

Makerlab Target Date means 16 months from and including the Construction Commencement Date for Phase 1 subject to extension pursuant to clause ~~14.8~~14.9;

Makerlab Underlease means a lease of the Makerlab to be granted by the Developer to RHP in a form to be agreed acting reasonably;

Makerlab Works means the works to construct the Markerlab as part of the Community Facility Works ;

Market Value means the market value of the Property as valued by a jointly appointed valuer in accordance with the definition of **Market Value** at paragraph 4 of Part 4 of the RICS Valuation – Global Standards 2017 (or practice statement which supersedes this Edition) or such other valuation basis the parties agree between them;

Mayor means the Mayor of London (as established under the Greater London Authority Act 1999) for the purposes of exercising planning powers under section 2A Planning Act;

Maximum Price means £4,785,002 or such higher sum by virtue of variations in accordance with clause 16 exclusive of VAT or such other amount agreed in writing by RHP;

Mechanical & Electrical Engineer means such consultant mechanical & electrical engineer that the Developer may appoint in connection with the Works and subject to RDL's approval (not to be unreasonably withheld or delayed);

Merger Date means the date falling 30 Working Days after the later of:

- (a) expiry of the Defects Liability Period for the last of the Works on the relevant Phase;
- (b) completion of all Defects notified during the relevant Defects Liability Period; and
- (c) completion of the sale by the Developer of all Dwellings (and associated car parking) constructed as part of the Developer Works on the relevant Phase;

Merger Deed means a Land Registry form TR1 or TP1 (in a form to be agreed (both parties acting reasonably)) to be entered into between the Developer and RHP and pursuant to which the Building Lease or part thereof (as applicable) will be merged and such merger may be contained in the Housing Unit Transfer;

Onerous Conditions means a condition attached to a Planning Permission or a planning obligation required in a Planning Agreement regulating the Development or use of the Property or the Estate which contains an obligation or restriction of any one or more of the following kinds:

- (a) it makes the Planning Permission personal to the Developer or to the Developer and RHP or to RHP or limits the class of persons able to implement the Planning Permission;
- (b) it grants a temporary Planning Permission or limits in duration the period for implementation to a period less than the statutory period for implementation set down in the Planning Act or so as to limit the duration of the Planning Permission once implemented;
- (c) it limits the occupation and/or use of the whole or any part of the Estate (other than the Affordable Housing Units) to any designated occupier or class of occupier;
- (d) it prevents the carrying out and completion construction of the Developer Works and/or the RDL Works and/or the Community Facility Works without the agreement or cooperation of an independent third party which cannot be obtained on terms and/or at a cost and/or within time which is reasonable in all the circumstances;
- (e) it does not automatically release either party from its obligations under a planning obligation on disposing of its interests in the Estate or does not automatically release either party from its obligations under a planning obligation on disposing of its interests in any part of the Estate in relation to that part or which obliges it to comply with any obligations prior to implementation of the Planning Permission to which it relates (save for any obligations in relation to the payment of the reasonable and proper legal fees of the Local Planning Authority);
- (f) it restricts the commencement of the use and occupation of the Estate or any part until after the occurrence of a specified event or events outside of the Estate or any part not within the reasonable control of the Developer and/or RHP;
- (g) it restricts the commencement of the use and occupation of the Property or any part until after occupation of the rest of the Estate (but not for avoidance of doubt construction);
- (h) unless otherwise agreed in writing by RHP, that the Planning Permission restricts the number of Affordable Housing Units to be constructed as part of the RDL Works to less than 221 Affordable Housing Units;

- (i) it requires the acquisition of land or rights outside the boundary of the Estate;
- (j) it does not contain a mortgagee exclusion clause that is satisfactory to RHP and the Developer;
- (k) any matter which is an Onerous Condition as that term is defined in the Collaboration Agreement; and
- (l) it creates a restriction on the proposed development of the Property which would substantially prejudice or delay commencement of such development or completion of it beyond the date on which commencement or completion would have occurred in the absence of such restriction;

Option means the option to purchase Dwellings more particularly set out in clause 23 of this Agreement;

Option Additional Units means up to 5 Dwellings which are not required to rehouse leaseholders on the Estate but which RHP wishes to acquire for the purposes of use as affordable housing;

Option Completion Date means in respect of each Dwelling comprising the Option the later of Practical Completion of the Dwelling or the date falling 20 Working Days after service of the Option Notice and for the avoidance of doubt there shall be an Option Completion Date in respect of those Dwellings set out in each Option Notice;

Option Discount Price means 82.5% of Market Value;

Option Notice shall have the meaning as set out in clause 23.7;

Option Period means a period commencing on the date of this Agreement and ending on the earlier of:

- (a) 24 months commencing on the Construction Commencement Date for Phase 1; and
- (b) the date on which the Vacant Possession Condition has been satisfied for the Estate;

Option Property means across the course of the Development up to 30 Dwellings to satisfy the Option Property Requirements to be constructed on the Property as part of the Developer Works (and not being Affordable Housing Units) and which the Developer shall offer so that:

- (a) in Phase 1, RHP will have a choice of not less than 6 Dwellings (within the 30 total) in the following mix and available for RHP to exercise the Option::
 - i x 2 - Studio flats;
 - ii x 3 - 2 bed, 4 person flats

- iii x1 - 3 bed, 5 person flat;
- (b) in Phase 2, RHP will have a choice of not less than 27 Dwellings (within the 30 total) in the following mix and available for RHP to exercise the Option :
 - i x 1 - Studio flat;
 - ii x 7 - 1 bed, 2 person flat;
 - iii x 13 - 2 bed, 4 person flats;
 - iv x 6- 3 bed, 5 person flats

Option Property List means a list from the Developer to RHP setting out the Dwellings to comprise the Option Property taking into account the Option Property Requirements;

Option Property Requirements means a list of the number and type (including number of bedrooms) of existing units on the Estate which remain occupied by Residents at the relevant time (and in respect of which RHP may have to offer Dwellings on the Development in order to implement its decant strategy and deliver vacant possession of the Estate) and direct detail of such at Appendix 13;

Overage means the 'Sales Overage Payment' (if any) to be calculated and paid in accordance with Schedule 2;

Pandemic Related Event: any localised or widespread occurrence of an infectious disease caused by any pathogen, whether bacterial, viral, or any other biological or natural agent;

Pandemic Related Matter: any of the following matters arising after the date of this Agreement from a Pandemic Related Event:

- (a) the implementation of mandatory public health measures by any government, local, national or supranational agency, authority, court, inspectorate, minister, ministry, regulator, official or public or statutory person (save where such measures are occasioned by any act, omission or default by the Developer or Contractor) which result in:
 - i the inability of the Developer/ Contractor to obtain sufficient labour or supervision required for such labour; or
 - ii unavoidable site closure, restricted access or amended working methods;
- (b) material shortages of plant or materials due to delays in their manufacture, importation or transportation;

Parties means RHP, RDL, the Developer and the Guarantor or any of them as the context may admit and the expression "Party" shall be interpreted accordingly;

Phase means Phase 1, Phase 2 or Phase 3 provided that the parties acknowledge that it may be necessary to revising the scope/extend of the Phases once Satisfactory Planning Permission is granted to accord with the agreed layout of the Development and agree to act reasonably in this regard;

Phase 1 means the first phase of the Development which the parties will act reasonably in ascertaining promptly following the grant of the initial Planning Permission but for the purposes of this Agreement is shown indicatively on the Phasing Plan at Appendix 11 but subject to amendment in accordance with clause 2.17 of this Agreement;

Phase 2 means the second phase of the Development which the parties will act reasonably in ascertaining promptly following the grant of the initial Planning Permission but for the purposes of this Agreement is shown indicatively and subject to planning on the Phasing Plan at Appendix 11;

Phase 3 means the third phase of the Development which the parties will act reasonably in ascertaining promptly following the grant of the initial Planning Permission but for the purposes of this Agreement is shown indicatively and subject to planning on the Phasing Plan at Appendix 11;

Phase 1 Completion Date means the tenth Working Day after the Unconditional Date;

Phase 2 Completion Date means the tenth Working Day after the Phase 2 Conditions have been satisfied but in any event no later than 5 years after the Phase 1 Completion Date;

Phase 3 Completion Date means the tenth Working Day after the Phase 3 Conditions have been satisfied but in any event no later than 5 years after the Phase 1 Completion Date;

Phase 2 Conditions means RHP's Phase 2 Conditions and the Replacement Homes Condition in so far as in relates to Phase 2;

Phase 3 Conditions means RHP's Phase 3 Conditions and the Replacement Homes Condition in so far as in relates to Phase 3;

Phase Conditions Longstop Date means:

- (a) for Phase 2 the later of:
 - i 5 months after the satisfaction of the Replacement Homes Condition for Phase 2; and
 - ii Practical Completion of the Community Facility; and
- (b) for Phase 3, 5 months after Replacement Homes Condition for Phase 3;

Phase 1 Works such part of the Works as are to be carried out on Phase 1;

Phase 2 Works such part of the Works as are to be carried out on Phase 2;

Phase 3 Works such part of the Works as are to be carried out on Phase 3;

Phase Variation has the meaning given in the Land Sale Agreement;

Plan means the plan annexed hereto marked "Property Plan"

Planning Act means the Town and Country Planning Act 1990 and any Act of Parliament for the time being in force amending or replacing the same and all regulations and orders made thereunder;

Planning Agreement means an agreement affecting the Estate (whether or not unilateral in nature or also affecting other property) made pursuant to section 106 Planning Act and/or section 33 Local Government (Miscellaneous Provisions) Act 1982 and/or section 38 and/or section 278 Highways Act 1980 and/or section 104 Water Industries Act 1991 or an agreement with any competent authority or body relating to other services;

Planning Application means an application for the Application Design and for full planning permission for the Development in accordance with Schedule 1 of this Agreement;

Planning Condition means, subject to Schedule 1 to this Agreement, the grant of a Satisfactory Planning Permission (and any associated Planning Agreement(s) if appropriate) for the carrying out of the Development in accordance with the provisions of Schedule 1 of this Agreement;

Planning Condition Satisfaction Date means the date on which the Planning Condition is satisfied;

Planning Performance Agreement means an agreement entered into between the Developer and the Local Planning Authority to manage the Planning Application;

Planning Permission means the grant of planning permission for the Development applied for under this Agreement and pursuant to its terms, either by the Local Planning Authority, the Secretary of State or the Mayor;

Planning Protocol means the planning protocol at Appendix 9;

Planning Refusal means a refusal of a Planning Permission applied for under the provisions of this Agreement (including a deemed refusal arising under section 78(2) Planning Act);

Plans means the plans showing the Base Design as amended in accordance with this Agreement;

Practical Completion means either when the RDL Works on a Phase, or the Developer Works on a Phase, or in respect of a Dwelling (but only where such Dwelling is a house), or the Community Facility Works or the Makerlab Works (as applicable) are certified as Practically Complete under both the Building Contract and this Agreement and **Practically Complete** shall have the same meaning;

Practical Completion Certificate means any written certificate or statement of practical completion (as the context requires) issued by RDL's Representative that the works thereunder are practically complete in accordance with the terms of this Agreement;

Premium means:

- (a) for the Phase 1 Building Lease, the sum of £1.00;
- (b) for the Phase 2 Building Lease, the sum of £1.00;
- (c) for the Phase 3 Building Lease, together the First Payment and the Second Payment;

Proceedings means either of the following:

- (a) an application for judicial review under Part 54 Civil Procedure Rules 1998; or
- (b) an application pursuant to section 288 Planning Act arising from the grant of the Satisfactory Planning Permission or a Planning Refusal by the Secretary of State,

including in each case any appeals to a higher court following a judgment of a lower court;

Professional Team means the:

- (a) Architect(s);
- (b) Structural and Civil Engineer;
- (c) Mechanical & Electrical Engineer;
- (d) Landscape Architect; and
- (e) Any other consultant with design responsibility

Professional Team Warranties means the forms of warranty to be entered into by each of the Professional Team and any replacement member of the Professional Team substantially in the form attached at Appendix 4, save for such amendments as the Developer, the relevant Professional Team member and RHP and RDL may agree;

Prohibited Person means an individual or person:

- (a) which is a person incorporated in or registered in or an individual resident in a country outside England and Wales unless it or he agrees to be bound by the jurisdiction of the English Courts and in respect of which person a legal opinion from a reputable independent law firm in the relevant jurisdiction is provided in a form reasonably satisfactory to RHP (acting reasonably) relating to:
 - i the authority and capacity of the person or individual to act; and
 - ii the enforceability of the obligations of the person or individual;

- (b) which enjoys sovereign or state immunity, unless it is a department, body or agency of the United Kingdom Government or a sovereign wealth fund;
- (c) which uses funds that are derived from illegal or illegitimate activities;
- (d) which has been convicted of criminal activities (disregarding for these purposes spent convictions and convictions of an immaterial nature in the context of this Agreement) or is or has been involved in organised crime;
- (e) which is named on the Consolidated List of Terrorists maintained by the Government of the United Kingdom;
- (f) which is, or professes to be, resident in a nation state which at the relevant time is not recognised by the Government of the United Kingdom or in respect of which the Government of the United Kingdom has withdrawn or suspended diplomatic relations (for so long as such withdrawal or suspension lasts); or
- (g) who is a senior governmental or military officer or political leader of any of the countries referred to in paragraph (f) of this definition or any entity beneficially owned by such individuals or their immediate family;

Property means the land comprising Phase 1, Phase 2 and Phase 3 and more particularly edged in red on the Plan ;

Relevant Authority means the Local Planning Authority the Secretary of State the highway authorities town and parish councils gas water electricity cable television and telecommunication companies and any other authority company utility body corporation or organisation or government department or Secretary of State or Minister concerned with the grant of planning permission the control of development or the provision and adoption of any estate roads and drainage systems and drainage or the installation and provision of service installations and services or the provision of affordable housing;

Replacement Homes Condition means in respect of Phase 2 and Phase 3 only a sufficient number of Affordable Housing Units having been build and reached Practical Completion (in accordance with this Agreement) in the preceding Phase to allow for the re-homing of Residents in Phase 2 or Phase 3 (as applicable) within the Estate provided always that RHP and RDL shall pay the relevant part of the Affordable Housing Package Price in respect of such Affordable Housing Units;

Representative means:

- (a) the Funder;
- (b) an administrative receiver or receiver and manager of the Developer;
- (c) an administrator of the Developer;
- (d) a person directly or indirectly owned or controlled by the Funder; or

- (e) any other person approved in writing by RHP (such approval not to be unreasonably withheld or delayed) who satisfies the criteria of a Suitable Substitute;

Residents means the residents currently occupying Phase 1, Phase 2 and Phase 3 for which replacement homes on the Estate are to be constructed;

Retention means 3% of the Affordable Housing Works Price and 3% of the CF Works Price due to the Developer hereunder;

Requisite Consents means the Planning Permission or any other planning permissions relating to the Works, approval of reserved matters and all details pursuant thereto, building regulation approval, fire officer approval and any other permissions, approvals, certificates and licences that may be necessary pursuant to statutory requirements or otherwise to the carrying out of the Works and if they are destroyed or damaged, the reinstatement of the Works;

RHP's Conditions Precedent means:

- (a) the Vacant Possession Condition in so far as it relates to Phase 1 only; and
- (b) the Title Condition;

RHP's Fire Assessor means such duly qualified representative of RHP that RHP or RDL may appoint to review compliance of the Works in accordance with the Fire Strategy;

RHP's Phase 2 Conditions means the Vacant Possession Condition and the Title Condition as such relates to Phase 2;

RHP's Phase 3 Conditions means the Vacant Possession Condition and the Title Condition as such relates to Phase 3;

RDL's Representative means such firm notified appointed by RHP and in connection with the RDL Works and notified to the Developer;

RHP's Solicitors means Trowers & Hamlins LLP of 3 Bunhill Row, London EC1Y 8YZ (reference: RZG.049756.00144.JAS) or such other solicitors notified by RHP to the Developer from time to time;

RDL Variation is a variation requested by RDL pursuant to the provisions of clause ~~17.1~~[16.1](#)

RDL Works means the design construction and rectification of Defects of the Affordable Housing Units on the Estate in accordance with the RDL Works Specification in accordance with the Planning Permission and the Plans and the terms of this Agreement and which will be retained by RHP as varied by any variation permitted pursuant to this;

RDL Works Longstop Date means for each Phase the date falling 18 months after the relevant RDL Works Target Date or as extended pursuant to clause ~~14.9~~[14.10](#);

RDL Works Specification means the specification for the RDL Works as set out at Appendix 2A (and as attached to an email dated 24 September 2021, timed at 00:02 from Amy Shaw to Robert Lee and in the event of any discrepancy between Appendix 2A and the documents attached to the email, the email documents shall prevail) and the Makerlab Specification each as varied, altered, substituted and/or added to from time to time in accordance with the provisions of this Agreement;

RDL Works Target Date means:

- (a) for Phase 1 - 16 months from and including the Construction Commencement Date for Phase 1 subject to extension pursuant to clause 14.9;
- (b) for Phase 2 – 26 months from and including the Construction Commencement Date for Phase 2 subject to extension pursuant to clause 14.9; and
- (c) for Phase 3 – 35 months from and including the Construction Commencement Date for Phase 3 subject to extension pursuant to clause 14.9;

ROCE means the return on capital employed measured across the Development as a whole;

Sale Lease means the lease to be granted by the Developer to RHP in relation to the Option Property in such form as is to be agreed between RHP and the Developer taking into account the provisions of clause 26 of this Agreement with any dispute as to the terms or content of the Sale Lease to be determined by an Independent Person pursuant to clause 28 hereof;

Satisfactory Planning Permission means the grant of Planning Permission (applied for under this Agreement) being compliant with the terms of Schedule 1 of this Agreement and not subject to any Onerous Conditions;

Second Payment means the sum of £9,575,000 exclusive of VAT (if any);

Second Payment Date means the date which is 32 months following the Building Lease Completion Date for Phase 3;

Section means a sub phase of at least 12 Units within a Phase, or Community Facilities or the Makerlab that have reached Practical Completion as notified by the Developer to RDL in writing from time to time by reference to a plan;

Secretary of State means the Secretary of State for Communities and Local Government or other minister or office holder for the time being having the powers or entitle to exercise the powers now conferred on the Secretary of State by section 77 and 79 Planning Act or an inspector appointed by any such person;

Social Value Offer means the Developer's offer to add social value through the delivery of the Development and as detailed in Appendix 10;

Specification(s) means the RDL Works Specification and/or the Developer Works Specification and/or the Community Facility Specification and/or the Makerlab Specification (as varied pursuant to this Agreement);

Stakeholder Engagement Protocol means the Developer's proposals for engagement with residents at the Estate, the London Borough Richmond upon Thames and other interested parties attached at Appendix 9;

Start on Site means:

- (a) excavation for strip or trench foundations or for pad footings;
- (b) digging out and preparation of ground for raft foundations;
- (c) vibrofloatation, piling, boring for piles or pile driving; or
- (d) drainage work specific to the buildings forming part of the Development;

Step In Notice means a notice given by the Funder to RHP pursuant to clause 35.4.2 of this Agreement stating that the Funder is exercising the step-in rights under this Agreement and identifying the Representative;

Step In Period means the period of 80 Working Days commencing on the date RHP serves notice with their intention to determine this Agreement (or part of it) in accordance with clause ~~35~~36;

Stopping Up Condition means the grant of a stopping up order (and the expiry of any challenge period in respect thereof):

- (a) for Phase 1 in respect of the element of roadway shown within the area hatched red on the plan annexed hereto marked "stopping up plan" at Appendix 12;
- (b) for Phase 2 in respect of the element of roadway shown within the area hatched blue on the plan annexed hereto marked "stopping up plan" at Appendix 12;
- (c) for Phase 3 in respect of the element of roadway shown within the area hatched green on the plan annexed hereto marked "stopping up plan" at Appendix 12;

Structural and Civil Engineer mean such structural and civil engineer as the Developer may appoint in connection with the Works from time to time and subject to RDL's approval (not to be unreasonably withheld or delayed);

Sub-Contract(s) means the contract between the Contractor and Sub-Contractor in relation to the Works or any part of them;

Sub-Contractor means any consultants, sub-contractors and suppliers appointed by the Contractor to undertake any material responsibility for the preparation of design for the Works;

Sub-Contractor Warranties means the forms of warranty to be entered into by the Sub-Contractors and any replacement Sub-Contractor substantially in the form attached at Appendix 4 (or such other form as approved by RHP and RDL), save for such amendments as the Developer, Sub-Contractors and RHP may agree;

Suitable Substitute means the Approved Funder or such other person approved by RHP (such approval not to be unreasonably withheld or delayed) as having the legal capacity, power and authority, financial, technical, design and project management capabilities to become a party to perform the obligations of the Developer under this Agreement and employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it and the financial standing to enable it to perform the obligations of the Developer under this Agreement and not being a Prohibited Person;

Title Condition means RHP completing the acquisition of the relevant land for the relevant Phase pursuant to the Land Sale Agreement and having all necessary discharges, consents, certificates to enable the grant of the relevant Building Lease to the Developer on the relevant Building Lease Completion Date;

Title Insurance Condition means the Developer obtaining defective title insurance from a reputable insurer on terms and with coverage and a premium acceptable to the Developer (acting reasonably) in respect of:

- (a) restrictive covenants contained in a Transfer dated 19 January 1935 affecting title numbers TGL312337 (Entry C1), TGL190592 (Entry C1) and TGL190590 (Entry C1) and a Transfer dated 5 May 1961 affecting title number SY266816 (Entry C1);
- (b) the possessory title affecting that part of the Property registered under title number TGL537710;
- (c) potential interference of rights and unknown easements and quasi easements contained in a Transfer dated 17 July 2000 affecting title numbers TGL190588 (Entry A2 and C1), TGL190592 (Entry C2) and TGL190590 (Entry C2);
- (d) unknown restrictive covenants as referred to at Entry C1 of title number TGL537110; and
- (e) lift and shift insurance in relation to rights to install and subsequently maintain drains and sewers within the Property pursuant to Entry C3 of title number SY266816'

Title Number(s) means the land registered at the Land Registry with the following title numbers: TGL190592, TGL190588, TGL190590, TGL312351, TGL312337, SY311936, SY294801, SY266816, TGL537710 and SY220864;

Unconditional Date means the date on which the last of the Conditions Precedent is satisfied or waived in accordance with the terms of this Agreement;

Vacant Possession Condition means RHP procuring vacant possession of the relevant Phase;

Vacant Possession Satisfaction Date means the date on which the Vacant Possession Condition is satisfied for a Phase;

VAT means value added tax chargeable under the VAT Act or any tax of a similar nature which may be substituted for or levied in addition to it;

VAT Act means Value Added Tax Act 1994;

Viability Condition means confirmation from the Developer that the Development remains Financially Viable;

Works means the Phase 1 Works, the Phase 2 Works and the Phase 3 Works; and

Working Day means any day (other than a Saturday or a Sunday) on which clearing banks in the City of London are actually open for banking business during banking hours and references to Working Days shall be construed accordingly.

- 1.2 Words importing the singular number only shall include the plural number and vice versa and where two or more persons are included in the expression RHP, RDL, the Guarantor and the Developer the agreements and covenants contained in this Agreement which are expressed to be made by RHP, RDL, the Guarantor and/or the Developer (as appropriate) shall be deemed to be made by such persons jointly and severally.
- 1.3 The headings appearing in this Agreement are for reference only and shall not affect its construction.
- 1.4 References in any Schedule to numbered paragraphs are references to the relevant paragraphs in that Schedule.
- 1.5 Reference to any statute or statutory section or generally to statutes or legislation shall be taken to include every instrument, order, direction regulation, by law, permission, licence, consent, condition scheme or other matter made under it or pursuant to them.
- 1.6 In this Agreement where the context so admits words importing the masculine gender shall include also the feminine gender and vice versa and words importing the singular number shall include also the plural number and vice versa.
- 1.7 Where the consent agreement or approval of a party hereto is required (**Clearance**), such Clearance shall not be unreasonably withheld or delayed and shall be deemed to have been given if such Clearance (or substantive reasons as to why such Clearance cannot be given) has not been forthcoming within 15 Working Days of a written request for Clearance having been made Provided That if 10 Working Days of the consent, agreement or approval being sought the party seeking the such consent, agreement or approval has not received a response from the other, the party seeking such consent, agreement or approval shall resend the request (with supporting details) and copy the request to Director of Development, marking such further request "Urgent" and specifying the date by which a response is required.

2 **Conditions and Phasing**

Conditions Precedent

2.1 All of the provisions of this Agreement (other than clauses ~~2.1-2.5, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 2.17, 3, 7, 9, 13, 20.1-20.10, 22.1, 22.2, 26.2, 26.3, 27, 28, 30, 31-34, 36, 39, 40, 41~~2.1-2.5, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 2.17, 3, 7, 9, 13, 20.1-20.10, 22.1, 22.2, 26.2, 26.3, 27, 28, 30, 34, 36, 40, 41-50 and the provisions of Schedule 1) only apply upon the Unconditional Date occurring.”

2.2 The Developer shall use reasonable endeavours to procure satisfaction of the Developer's Conditions Precedent including without limitation the Planning Condition as soon as reasonably possible after the date of this Agreement (and in the case of the Planning Condition in accordance with its obligations in Schedule 1) and shall keep RHP informed of its progress in doing so.

2.3 RHP shall use reasonable endeavours to procure satisfaction of the RHP Conditions Precedent at its own cost as soon as reasonably possible after the date of this Agreement and shall keep the Developer informed of its progress in doing so.

2.4 The Developer will no later than 1 month after the later of:

2.4.1 the Planning Condition Satisfaction Date; and

2.4.2 the Vacant Possession Satisfaction Date in respect of Phase 1,

deliver to RHP the Final Financial Model and on the date of delivery of the Final Financial Model shall confirm whether the Viability Condition has been satisfied.

2.5 The Developer may waive the Viability Condition by notice in writing to RHP in which case the Viability Condition will be deemed to have been satisfied on the date such notice is given.

Phase Conditions

2.6 The Developer shall use reasonable endeavours to procure satisfaction of the Replacement Homes Condition for Phase 2 and the Replacement Homes Condition for Phase 3 as soon as reasonably possible (with due regard to the Construction Commencement Date and/or any Delaying Event affecting the delivery of such units).

2.7 RHP shall use reasonable endeavours to procure satisfaction of:

2.7.1 the Title Condition for Phase 2 and Phase 3 at its own cost as soon as reasonably possible after the date of this Agreement; and

2.7.2 the Vacant Possession Condition for Phase 2 and Phase 3 at its own cost as soon as possible after the satisfaction of the Replacement Homes Condition for the relevant Phase.

2.8 RHP shall, as necessary, enforce the terms of the Land Sale Agreement and the timely submission of any request for the Council to utilise its powers of compulsory purchase in accordance with the Collaboration Agreement in order to assist RHP in respect of its obligations at clause 2.7 and RHP shall keep the Developer regularly informed of its progress in satisfying such conditions.

Assistance

Provided that the Developer acknowledges that RHP shall not be able to or obliged to progress the Title Condition until and after satisfaction of the Planning Condition

2.9 The parties shall give such assistance as the other shall reasonably require and can reasonably give to the other to satisfy the Conditions Precedent and/or the Phase 2 Conditions and/or the Phase 3 Conditions, subject to the party whose responsibility it is to satisfy the relevant Conditions Precedent meeting the cost of the other party in providing such reasonable assistance.

Failure to satisfy conditions

2.10 If the Conditions Precedent shall not have not been satisfied (or waived) on or before the Conditions Precedent Longstop Date then either RHP or the Developer may terminate this Agreement by serving written notice to that effect on the other at any time prior to satisfaction of the Conditions Precedent.

2.11 If RHP's Phase 2 Conditions or RHP's Phase 3 Conditions shall not have been satisfied (but the Replacement Homes Condition for the relevant Phase has been satisfied) on or before the relevant Phase Conditions Longstop Date then the Developer may terminate this Agreement by serving written notice to that effect on RHP at any time prior to the satisfaction of the RHP's Phase 2 Conditions Precedent or the RHP's Phase 3 Conditions Precedent (as the case may be) and the provisions of clause ~~38~~39 shall apply.

2.12 Notice to terminate under clause 2.10 may be given at any time after the Conditions Precedent Longstop Date unless in the meantime the Conditions Precedent have been satisfied.

2.13 Notice to terminate under clause 2.11 may be given at any time after the Phase 2 Conditions Longstop Date or the Phase 3 Conditions Longstop Date (as the case may be) unless in the meantime the relevant Phase 2 Conditions or Phase 3 Conditions (as the case may be) have been satisfied.

2.14 Termination of this Agreement under this clause 2 shall be without prejudice to the rights of RHP, RDL and the Developer against the other in respect of any antecedent breach of the provisions of this Agreement by the other.

2.15 Any dispute between the parties as to whether the Conditions Precedent and/or the Phase 2 Conditions and/or the Phase 3 Conditions have been satisfied shall be settled in accordance with clause ~~27~~28.

Extension to Conditions Precedent Longstop Date

2.16 If as at the Conditions Precedent Longstop Date:

2.16.1 the Planning Application has been submitted but a decision in writing is awaited;

2.16.2 an inquiry and/or decision are awaited in respect of an Appeal;

2.16.3 Proceedings have been instituted but not finally resolved; or

2.16.4 the Local Planning Authority has passed a resolution to grant a Satisfactory Planning Permission subject to the completion of a Planning Agreement which remains to be completed,

then the Conditions Precedent Longstop Date shall be the date being 20 Working Days after the earlier of:

- (a) the expiry of six weeks and two Working Days in the case of a grant by the Local Planning Authority or six weeks and two Working Days in the case of a grant by the Secretary of State from the grant of the Satisfactory Planning Permission where no Proceedings shall have been instituted; and
- (b) the date on which a Satisfactory Planning Permission is granted or upheld following the exhaustion of Proceedings,

~~provided that the Conditions Precedent Longstop Date shall not be extended by more than a further three months (i.e. beyond 30 September 2022).~~

beyond 30 October 2022

Phasing and Road Closure

- 2.17 The Parties intend that Phase 1 of the Development should comprise the land as identified on the Plans. However, in the event that RHP anticipate that it will be or is unable to satisfy the Vacant Possession Condition for that part of Phase 1 comprising Hatch House by the Condition Precedent Longstop Date, then Phase 1 shall constitute that part of the Estate shown as Plan B on the Appendix 11 Phasing Plan and the obligations of the Developer in this Agreement shall be deemed to be varied mutatis mutandis so as to accommodate Phase 1 excluding Hatch House and thus moving the proposed Block A (to be constructed on the site of Hatch House) to Phase 2.

3 **Security**

From the date of satisfaction of the Vacant Possession Condition for a Phase, the Developer shall, at its own cost, secure and arrange such security as it considers reasonable in the circumstances to secure the Estate (or relevant part) and prevent unauthorised access or occupation provided that RHP shall use reasonable endeavours to ensure that the Vacant Possession Condition is not achieved until the Planning Condition has been satisfied and shall keep the Developer regularly informed of progress in satisfying the Vacant Possession Condition for each Phase.

4 **Land Registry Matters**

- 4.1 Prior to completing the acquisition of any relevant land pursuant to the Land Sale Agreement, RHP shall instruct RHP's Solicitors to obtain a Land Registry official search with priority (**OS Search**) showing the relevant land as free from encumbrances other than those set out in the Land Sale Agreement (or such other encumbrances as may have previously been approved by RHP and the Developer such approval not to be unreasonably withheld or delayed) and shall supply a copy of such search to the Developer.

- 4.2 Following completion of the acquisition of any relevant land pursuant to the Land Sale Agreement RHP instruct RHP's Solicitors to apply to the Land Registry within the priority period set out within the relevant OS Search to register the land with freehold title absolute and shall:

- (a) not withdraw such application (without the approval of the Developer such approval not to be unreasonably withheld or delayed);
- (b) use reasonable endeavours to reply promptly and within the specified period to any requisitions raised by the Land Registry;
- (c) at the request of the Developer RHP shall within 10 (ten) working days supply to the Developer a copy of the relevant application to the Land Registry (including replies to any requisitions).

4.3 On each of the Phase 1 Completion Date, Phase 2 Completion Date and Phase 3 Completion Date respectively RHP shall procure and deliver to the Developer the following (to the extent they shall remain on the relevant titles in respect of the Land Registry restrictions registered against the Title Number for those Phases :

4.3.1 duly completed and signed Land Registry form RX4s (or any equivalent thereto) to withdraw the following restrictions from the titles to the Site:

- (a) Entry B3 of title number SY294801;
- (b) Entry B2 of title number SY266816;
- (c) Entries B2, B3, B4 and B5 of title number TGL190592;
- (d) Entries B2, B3, B4, B5 and B9 of title number TGL190590;
- (e) Entries B2, B3 and B4 of title number TGL190588;

4.3.2 a duly completed discharge in respect of the Charge dated 31 January 2014 referred to at Entry B9 of title number TGL190590.

5 Within 10 (ten) working days of receipt of confirmation of registration from the Land Registry, RHP shall supply a copy of the registered title of the relevant land to the Developer.

6 **Completion of the Building Lease(s) and Grant of Licence**

6.1 Completion of the Building Lease(s)

6.1.1 The parties agree that as a result of any changes to the Base Design in accordance with this Agreement, following the grant of Planning Permission the parties shall (acting reasonably ~~and the Affordable Housing Underlease~~) agree such appropriate changes as are necessary to the Building Lease and the Affordable Housing Underlease and the plans to be annexed thereto so as to reflect the appropriate extent of the Property (or Affordable Housing Units (as applicable)) and all appropriate rights and reservations as may be required in the context of the Development.

6.1.2 In consideration of the Premium and the obligations on the Developer in this Agreement RHP shall grant the Building Lease(s) to the Developer which shall be completed on the relevant Building Lease Completion Date and the Developer shall carry out the Phase 1 Works, Phase 2 Works and the Phase 3 Works (as applicable) in accordance with the terms of this Agreement.

- 6.1.3 The Premium shall be payable:
- (a) for Phase 1 and Phase 2 on the relevant Building Lease Completion Date;
 - (b) for Phase 3:
 - i the First Payment shall be paid on the Building Lease Completion Date for Phase 3; and
 - ii the Second Payment shall be made on the Second Payment Date.
- 6.1.4 The Building Lease(s) shall be completed at the offices of the RHP's Solicitors or at such other place in England and Wales as RHP's Solicitors reasonably require.
- 6.1.5 On the Building Lease Completion Date RHP shall provide, or procure RHP's Solicitors provide an unconditional undertaking to provide, any Discharge Document required in respect of the Property and required in order to enable the registration of the Building Lease free from charge.

6.2 Licence for Works to Construct the Community Facilities

- 6.2.1 The Base Design provides for the Community Facilities to be constructed in the location shown on the Plans. In the event that the Satisfactory Planning Permission provides for the Community Facilities to be constructed in the location shown in the Base Design then:
- (a) from the Phase 1 Completion Date, RHP grants licence for the Developer (together with its contractors and agents) to enter onto the CF Plot between the permitted hours (as set out in clause 6.2.1(d)) for purposes only as are reasonably envisaged by this Agreement and for the anticipated implementation of the Development and the carrying out of the Community Facility Work;
 - (b) the licence granted pursuant to clause 6.2.1(a) is granted:
 - i in common with the RHP;
 - ii for the period from the Phase 1 Completion Date until the earlier of:
 - A Practical Completion of the Community Facilities; or
 - B the date of termination of this Agreement; and
 - (c) the Developer acknowledges that:
 - i it shall occupy the CF Plot as a licensee and that no relationship of landlord and tenant is created between RHP and the Developer by this licence;
 - ii the licence to occupy granted by clause 6.2.1(a) is personal to the Developer and is not assignable;

- (d) the Developer acknowledges it shall only be permitted to occupy the CF Plot to undertake development works between 8am and 6pm on Mondays to Fridays and 8am and 1pm on Saturdays inclusive (but not on public holidays) PROVIDED THAT for the avoidance of doubt this restriction shall not apply to use of the CF Plot for the storage of materials plant and machinery and the like .

6.2.2 In relation to the CF Curtilage, RHP confirms and restates the terms of clause 30.14 of the Land Sale Agreement and shall permit the Developer licence to enter the CF Curtilage on the terms set out in clause 30.14 of the Land Sale Agreement and that the provisions of this clause may be enforced by the Council as anticipated by clause ~~30.1.4.3~~30.14.3 of the Land Sale Agreement. and the Developer confirms and acknowledges that:

6.2.2.1 the Developer will comply with the terms of clause 30.14, and also with clause 4.2, of the Land Sale Agreement and that the same shall apply; and

6.2.2.2 the Council shall be entitled to enforce this clause 6.2.2 pursuant to the Contracts (Rights of Third Parties) Act 1999."

6.2.3 In the event that the Satisfactory Planning Permission provides for the Community Facilities to be constructed in a location other than as shown in the Base Design and such that the Community Facilities are not a freestanding building(s) then the parties acting reasonably will use reasonable endeavours to agree any changes to this Agreement, and/or the Building Lease and agree the terms of any additional documents required such that the footprint of the Community Facilities will be included in one of the Building Leases granted to the Developer and then leased back to RHP (or at RHP's direction to the Council).

7 Compliance

7.1 Subject always to clause 13 the Developer shall at all times observe, perform and comply with:

7.1.1 the Collaboration Agreement (to the extent that the Developer has covenanted to comply with the Collaboration Agreement in the Deed of Adherence);

7.1.2 the Deed of Adherence;

7.1.3 the Land Sale Agreement (to the extent that the Developer has covenanted to comply with the Land Sale Agreement in the Deed of Adherence).

7.2 The Developer shall at all times observe, perform and comply with:

7.2.1 the Stakeholder Engagement Protocol;

7.2.2 the Design Evolution Protocol;

7.2.3 the Social Value Offer; and

7.2.4 the Construction Protocol.

7.3 RHP shall not terminate the Land Sale Agreement or the Collaboration Agreement without the approval of the Developer (such approval not to be unreasonably withheld or delayed).

7.4 RHP shall at all times observe perform and comply with the Collaboration Agreement and The Land Sale Agreement to the extent that they affect the subject matter of this Agreement.

8 **Not used**

9 **Design Development**

9.1 To the extent that the design of the Works or any part(s) of the Works is not described in full in the Specification such designs shall be submitted by the Developer to RDL's Representative for approval on behalf of RDL (such approval not to be unreasonably withheld or delayed, but subject to clause 9.3). The designs shall, to the extent not already covered by the Specification:

9.1.1 to be worked up to a RIBA Stage 3 design level as a minimum;

9.1.2 without limitation to any other parts of the Works, in the case of the Community ~~Facilities~~Facility Works include fitting-out and equipping of the Community ~~Facilities~~ and the Makerlab;

9.2 The Developer shall not proceed with the Works unless and until the information submitted and approved in accordance with the provisions of clause 9.1 has been designated Category "A" or "B" by RDL which RDL undertakes to do within 5 working days (time to be of the essence). The designation "A", "B" or "C" shall, for the purposes of this clause 9 have the following meanings:

9.2.1 Category "A" means proceed with the information;

9.2.2 Category "B" means proceed with the information but take note of comments made;

9.2.3 Category "C" means the information is rejected and needs amendment and resubmission in accordance with clause 9.1 to achieve Category "A" or "B" status;

9.2.4 the design/detail shown/detailed on/in the information returned by RDL and designated Category "A" or "B" including any comments shall become for the purposes of this Agreement part of the relevant Specification and the Works; and

9.2.5 RDL nor RHP shall not be responsible for any fees, losses, expenses and/or delays arising either directly or indirectly from any aforementioned designation and no approval or any condition attaching to any such approval shall in any way affect RDL's or RHP's liabilities under this Agreement.

9.3 The Developer acknowledges that in relation to the Community ~~Facilities~~Facility Works, RHP requires the approval of the Council. RHP and / or RDL will respond as soon as reasonably practicable to any request for approval hereunder and in any event within 17 Working Days Provided That if the Seller does not respond with the said 17 Working Days

period, the Developer will resend the request and information to The Director of Development at RHP (or such other person notified in writing by RHP to the Developer from time to time for these purposes) and if RHP or RDL does not respond within a further 10 Working Days then RHP and RDL shall be deemed to approve the relevant request;

9.4 In developing the Specification pursuant to this clause 9, the parties shall have regard to the Maximum Price.

9.5 The Developer shall when developing the design ensure compliance with the Development Principles.

9.6 Following the design for the Community Facility Works becoming fixed following the grant of Planning Permission and prior to Start on Site for Phase 1, the Developer will confirm the CF Works Fix Price.

10 **RDL Works**

10.1 The Developer shall carry out the RDL Works using all the reasonable skill and care to be expected of a properly qualified and competent developer experienced in the carrying out of such works for projects of a similar size scope value character and complexity to the RDL Works.

10.2 The Developer shall procure that the RDL Works are designed carried out and completed:

10.2.1 in a proper and workmanlike manner in accordance with good building practice, current codes of practice and applicable UK Designated Standards;

10.2.2 so as to achieve Practical Completion of the RDL Works on or prior to the RDL Works Target Date but in any event no later than the RDL Works Longstop Date;

10.2.3 using good quality and suitable new and sound materials of their various kinds supplied in accordance with the Plans and RDL Works Specification (subject to variation in accordance with clause 16 of this Agreement) and the Developer shall not knowingly use any materials or products which constitute Deleterious Materials;

10.2.4 ensuring that it shall not use, specify or authorise the use of any insulation, filler or cladding material used in external wall construction that does not comply with the requirements in the Requisite Consents or is not of limited combustibility either individually or as a combination. The Developer will provide RDL with evidence that the insulation, filler and cladding material either complies with 'Approved Document B Volume 2: Fire Safety – Buildings other than dwellinghouses' or test results to confirm that the criteria set out in BR 135 or such regulations, requirements and guidance issued by the Government post-May 2018 have been complied with; and

10.2.5 in accordance with:

(a) the Fire Strategy;

- (b) the RDL Works Specification;
- (c) the Plans;
- (d) the Requisite Consents;
- (e) the Planning Permission and any Planning Agreement relevant to the RDL Works;
- (f) the terms of the Contract Documents;
- (g) all applicable statutory requirements and regulations (including but not limited to the CDM Regulations) affecting the RDL Works;
- (h) the Latent Defects Insurer's Requirements to enable a Cover Note to be issued;
- (i) the handover requirements in the RDL Works Specification; and
- (j) the London Plan and the Housing Supplementary Guidance and the Nationally Described Space Standard (May 2016) (and any applicable successor thereto).

10.3 For the purposes of the CDM Regulations, the Developer and RDL agree that the Developer shall act as the only 'client' in respect of the RDL Works and that the Developer shall perform in all respects the duties of a client pursuant to the CDM Regulations. The Developer shall appoint the principal designer and the principal contractor pursuant to the CDM Regulations prior to the commencement of the RDL Works and shall promptly notify RDL of the identity of both the principal designer and the principal contractor.

10.4 The Developer shall:

10.4.1 procure registration of the RDL Works with the Latent Defects Insurer within six weeks of the Construction Commencement Date and shall provide copies of the final certificates for the Affordable Housing Units to RDL as a condition precedent to Practical Completion; and

10.4.2 prior to the Construction Commencement Date provide to RHP and RDL evidence (to their reasonable satisfaction) of the discharge of all pre-commencement conditions attached to the Planning Permission.

10.5 The Developer shall enter into:

10.5.1 the Building Contract with the Contractor; and

10.5.2 the Appointments,

as soon as reasonably practical after the Viability Condition has been satisfied but in any event before the Construction Commencement Date.

10.6 The Developer shall as soon as practicable after the appointment of each of the Professional Team, the Contractor and Sub-Contractors (and in any event within 28 days of such appointment) procure and deliver to RDL and RHP and the Council (as

applicable) the Collateral Warranties executed as deeds by each member of the Professional Team, the Contractor and the Sub-Contractors in favour of:

10.6.1 RDL and RHP (and if requested by RHP any funder of RHP) in relation to the RDL Works (including the Makerlab Works) and the Developer Works; and

10.6.2 in favour of RDL, RHP and the Council in relation to the Community Facility Works,

10.7 The Building Contract and the Appointments shall be in the Agreed Form and certified copies shall be provided to RDL by the Developer within 14 days after execution.

10.8 Certified copies of the Sub-Contracts shall be provided to RDL by the Developer within 20 Working Days of execution.

10.9 Notwithstanding any other provisions in this Agreement, it shall be a condition precedent to the occurrence of Golden Brick that the Developer has provided to RDL the Collateral Warranties from each and every member of the Professional Team, the Contractor and Sub-Contractors pursuant to clause 10.6.

10.10 Nothing in this Agreement shall restrict or exclude the Developer's liability for death or personal injury caused by the Developer's negligence.

11 **Developer Works**

11.1 The Developer shall carry out the Developer Works using all the reasonable skill and care to be expected of a properly qualified and competent developer experienced in the carrying out of such works for projects of a similar size scope value character and complexity to the Developer Works.

11.2 The Developer shall procure that the Developer Works are designed carried out and completed:

11.2.1 in a proper and workmanlike manner in accordance with good building practice, current codes of practice and applicable UK Designated Standards;

11.2.2 using good quality and suitable new and sound materials of their various kinds supplied in accordance with the Plans (subject to variation in accordance with clause 16 of this Agreement) and the Developer shall not knowingly use any materials or products which constitute Deleterious Materials;

11.2.3 ensure that it shall not use, specify or authorise the use of any insulation, filler or cladding material used in external wall construction that does not comply with the requirements in the Requisite Consents or is not of limited combustibility either individually or as a combination. The Developer will provide RDL with evidence that the insulation, filler and cladding material either complies with 'Approved Document B Volume 2: Fire Safety – Buildings other than dwellinghouses' or test results to confirm that the criteria set out in BR 135 or such regulations, requirements and guidance issued by the Government post-May 2018 have been complied with; and

11.2.4 in accordance with:

- (a) the Developer Works Specification;
- (b) the Fire Strategy;
- (c) the Plans;
- (d) the Requisite Consents;
- (e) the Planning Permission and the Planning Agreement insofar as relevant to the Developer Works;
- (f) the terms of the Contract Documents;
- (g) the handover requirements set out in the RDL Works Specification as if they applied to the Developer Works;
- (h) all statutory requirements and regulations (including but not limited to the CDM Regulations) affecting the Developer Works; and
- (i) the Latent Defects Insurer's Requirements to enable a Cover Note to be issued.

11.3 For the purposes of the CDM Regulations, the Developer and RDL agree that the Developer shall act as the only 'client' in respect of the Developer Works and that the Developer shall perform in all respects the duties of a client pursuant to the CDM Regulations. The client shall appoint the principal designer and the principal contractor pursuant to the CDM Regulations prior to the commencement of the Developer Works and shall promptly notify RDL of the identity of both the principal designer and the principal contractor.

11.4 The Developer shall use reasonable endeavours to ensure the roads within the Development are (i) constructed to a standard acceptable by the local authority for adoption and (ii) subsequently adopted by the local authority;.

11.5 The Developer may make any variation, alteration, substitution and addition to the Developer Works without consent provided that:

11.5.1 it does not affect the RDL Works, the Makerlab Works or the Community Facility Works;

11.5.2 does not breach any Requisite Consent;

11.5.3 it does not affect the Fire Strategy;

11.5.4 will not adversely affect the marketability or value of RHP's interest in the Estate; and

11.5.5 it will not materially and/or adversely increase the cost of maintenance of the Development,

and any variation, alteration, substitution and addition to the Developer Works which is not permitted in accordance with this clause 11.5 shall be subject to RDL's approval, such approval not to be unreasonably withheld or delayed.

12 **Community Facility Works**

12.1 The Developer shall carry out the Community Facility Works using all reasonable skill and care to be expected of a properly qualified and competent developer experienced in the carrying out of such works for projects of a similar size scope value character and complexity to the Community Facility Works.

12.2 The Developer shall use reasonable endeavours to procure that the Community Facility Works are designed carried out and completed:

12.2.1 in a proper and workmanlike manner in accordance with good building practice, current codes of practice and applicable UK Designated Standards;

12.2.2 so as to achieve Practical Completion of the Community Facility Works on or prior to the Community Facility Works Target Date but in any event no later than the Community Facility Works Longstop Date;

12.2.3 using good quality and suitable new and sound materials of their various kinds supplied in accordance with the Plans (subject to variation in accordance with clause 16.1 of this Agreement) and the Developer shall not knowingly use any materials or products which constitute Deleterious Materials;

12.2.4 ensure that it shall not use, specify or authorise the use of any insulation, filler or cladding material used in external wall construction that does not comply with the requirements in the Requisite Consents or is not of limited combustibility either individually or as a combination. The Developer will provide RDL with evidence that the insulation, filler and cladding material either complies with 'Approved Document B Volume 2: Fire Safety – Buildings other than dwellinghouses' or test results to confirm that the criteria set out in BR 135 or such regulations, requirements and guidance issued by the Government post-May 2018 have been complied with; and

12.2.5 in accordance with:

- (a) the Community Facility Specification and the Makerlab Specification;
- (b) the Plans;
- (c) the Requisite Consents;
- (d) the Planning Permission and the Planning Agreement insofar as relevant to the Community Facility Works;
- (e) the terms of the Contract Documents;
- (f) the Collaboration Agreement and Land Sale Agreement;
- (g) all statutory requirements and regulations (including but not limited to the CDM Regulations) affecting the Community Facility Works; and
- (h) the Latent Defects Insurer's Requirements to enable a Cover Note to be issued.

- 12.3 For the purposes of the CDM Regulations, the Developer and RDL agree that the Developer shall act as the only 'client' in respect of the Community Facility Works and that the Developer shall perform in all respects the duties of a client pursuant to the CDM Regulations. The client shall appoint the principal designer and the principal contractor pursuant to the CDM Regulations prior to the commencement of the Community Facility Works and shall promptly notify RDL of the identity of both the principal designer and the principal contractor.
- 12.4 The Developer shall procure registration of the Community ~~Facilities~~Facility Works with the Latent Defects Insurer within six weeks of the Construction Commencement Date and shall provide copies of the final certificates for the Community Facilities to RDL as a condition precedent to Practical Completion.

12A Makerlab Works

- 12A.1 The Makerlab Works shall form part of the Community Facility Works, and without limitation to clause 12, the Developer shall carry out the Makerlab Works using all reasonable skill and care to be expected of a properly qualified and competent developer experienced in the carrying out of such works for projects of a similar size scope value character and complexity to the Makerlab Works.
- 12A.2 The Developer shall use reasonable endeavours to procure that the Makerlab Works are designed carried out and completed:
- 12A.2.1 in a proper and workmanlike manner in accordance with good building practice, current codes of practice and applicable UK Designated Standards;
- 12A.2.2 so as to achieve Practical Completion of the Makerlab Works on or prior to the Makerlab Works Target Date but in any event no later than the Makerlab Works Longstop Date;
- 12A.2.3 using good quality and suitable new and sound materials of their various kinds supplied in accordance with the Plans (subject to variation in accordance with clause 16 of this Agreement) and the Developer shall not knowingly use any materials or products which constitute Deleterious Materials;
- 12A.2.4 ensure that it shall not use, specify or authorise the use of any insulation, filler or cladding material used in external wall construction that does not comply with the requirements in the Requisite Consents or is not of limited combustibility either individually or as a combination. The Developer will provide RDL with evidence that the insulation, filler and cladding material either complies with 'Approved Document B Volume 2: Fire Safety – Buildings other than dwellinghouses' or test results to confirm that the criteria set out in BR 135 or such regulations, requirements and guidance issued by the Government post-May 2018 have been complied with; and
- 12A.2.5 in accordance with:
- (a) the Makerlab Specification;
 - (b) the Plans;
 - (c) the Requisite Consents;

- (d) the Planning Permission and the Planning Agreement insofar as relevant to the Makerlab Works;
- (e) the terms of the Contract Documents;
- (f) the Collaboration Agreement;
- (g) all statutory requirements and regulations (including but not limited to the CDM Regulations) affecting the Makerlab Works; and
- (h) the Latent Defects Insurer's Requirements to enable a Cover Note to be issued.

12A.3 For the purposes of the CDM Regulations, the Developer and RDL agree that the Developer shall act as the only 'client' in respect of the Makerlab Works and that the Developer shall perform in all respects the duties of a client pursuant to the CDM Regulations. The client shall appoint the principal designer and the principal contractor pursuant to the CDM Regulations prior to the commencement of the Makerlab Works and shall promptly notify RDL of the identity of both the principal designer and the principal contractor.

12A.4 The Developer shall procure registration of the Makerlab Works with the Latent Defects Insurer within six weeks of the Construction Commencement Date and shall provide copies of the final certificates for the Makerlab Work to RDL as a condition precedent to Practical Completion.

13 **Land Sale Agreement and Collaboration Agreement**

13.1 RHP shall not agree any revision or variation to the terms of the Collaboration Agreement and/or the Land Sale Agreement without the prior approval of the Developer (such approval not to be unreasonably withheld or delayed) Provided That this clause shall only apply where such revision or variation would:

13.1.1 vary any part of the Collaboration Agreement and/or the Land Sale Agreement which the Developer has covenanted to comply with under the Deed of Adherence; or

13.1.2 have a material effect on the terms of this Agreement or the delivery of the Development in accordance with this Agreement.

13.2 RHP shall not permit the Certifier to serve any notice on the Council to determine the Phase Build Dates or the anticipated dates of Practical Completion unless such dates have been approved by the Developer (such approval not to be unreasonably withheld or delayed).

13.3 In the event that any Phase of the Development (as permitted by a Satisfactory Planning Permission) differs from the phases set out within the Land Sale Agreement then RHP shall submit a notice to the Council in accordance with the Land Sale Agreement to request a Phase Variation and shall use reasonable endeavours to procure that such Phase Variation is approved promptly.

13.4 RHP will not terminate the Collaboration Agreement and/or the Land Sale Agreement without approval of Developer (not to be unreasonably withheld or delayed).

13.5 RHP will comply with the terms of the Collaboration Agreement and the Land Sale Agreement so far as they relate to the Property and are not the responsibility of the Developer pursuant to the Deed of Adherence.

14 **Completion of the Development**

Practical Completion

14.1 The Developer will give:

14.1.1 twelve weeks' notice;

14.1.2 eight weeks' notice; and

14.1.3 four weeks' notice,

of the anticipated date of achieving Practical Completion of any part of the Works.

14.2 Without prejudice to clause 14.1, the Developer will give not less than 3 months and 3 Working Days' notice of the anticipated date of achieving Practical Completion Community Facilities Works in order for RHP to comply with its obligations to notify the Council of the same pursuant to the terms of the Land Sale Agreement.

14.3 The Developer shall:

14.3.1 give at least five Working Days' prior written notice to RDL and RDL's Representative of the date on which the Developer anticipates a Phase or Section of the Development will achieve Practical Completion; and

14.3.2 propose a date and time (to be mutually agreed) for RDL, RDL's Representative, RHP's Fire Assessor and/or any person authorised by RDL (which shall include the Council's Representative in respect of inspecting the Community Facility Works or Makerlab Works) to accompany the Developer's inspection of the Development (or relevant part thereof) prior to:

(a) the issue of the relevant Practical Completion Certificate in relation to the RDL Works and/or the Community Facility Works and/or Makerlab Works; or

(b) in the case of the Developer Works the determination that the relevant Developer Works have reached Practical Completion.

14.4 In the event that the date or time of the inspection under clause 14.3.2 is changed by the Developer, the Developer shall give a further notice specifying the new date and time of inspection, save that the period of notice under clause 14.3.1 shall be reduced to three Working Days and the periods for the notices to be given under clauses 14.1.1-14.1.3 shall only apply if the new date of inspection is not less than thirteen, eight and four weeks (respectively) prior to the new date of inspection, and otherwise the Developer shall give such prior notice as is reasonable in the circumstances.

14.5 Within five (5) Working Days following the inspection described at clause 14.3.2, RDL's Representative may submit to the Developer comments in writing (and where required, a snagging list) as to whether or not it considers that Practical Completion has been

achieved. The Developer shall forthwith carry out such works detailed in the snagging list so that the relevant Section or Phase of the Development achieve Practical Completion and the procedures in clauses 14.3 shall be repeated until RDL's Representative confirms that Practical Completion has been achieved. In the event of a dispute as to whether the Development (or relevant Section) are Practically Complete it shall be referred to dispute resolution in accordance with clause 28 of this Agreement.

14.6 Notwithstanding any contrary provision in this Agreement RDL shall not be obliged to accept Practical Completion of the RDL Works or Community Facility Works or Makerlab Works on any day between the first Friday in December and 5th of January in any year or on a day other than a Working Day.

14.7 Following Practical Completion of the RDL Works (or Section thereof) the Developer shall be entitled to make an Application for Payment for one half of the Retention in respect of that part of the RDL Works which has been certified as Practically Complete.

14.8 Following Practical Completion of the Community Facility Works (or Section thereof) the Developer shall be entitled to make an Application for Payment for one half of the Retention in respect of that part of the Community Facility Works which has been certified as Practically Complete

Delaying Events and LADs

14.9 Notwithstanding any other provision of this Agreement if the RDL Works Target Date or Community Facility Works Target Date or the Makerlab Target Date (as the case may be) is not met because of any delay attributable to a Delaying Event, the Developer shall be given a fair and reasonable extension to the RDL Works Target Date or Community Facility Works Target Date or the Makerlab Target Date (as applicable) by fixing a later date which is such date taking into account a period of time equivalent to any extension of time granted to the Contractor under the Building Contract for the Delaying Event.

14.10 If the RDL Works Longstop Date or Community Facility Works Longstop Date or the Makerlab Target Date (as the case may be) will not be met because of a delay attributable to Delaying Event (b) to (i), the Developer shall be given a fair and reasonable extension to the RDL Works Longstop Date or the Community Facility Works Longstop Date or the Makerlab Target Date (as applicable) by fixing a later date which is fair and reasonable in the circumstances.

14.11 If the Developer:

14.11.1 fails to achieve Practical Completion of the Affordable Housing Units forming the RDL Works by the AH LADs Commencement Date then the Developer shall pay to RDL within ten Working Days of a request by RDL to do so by way of liquidated damages the AH LADs Sum for each week or part week that Practical Completion of the Affordable Housing Units forming the RDL Works is delayed calculated from the AH LADs Commencement Date until the date on which Practical Completion for the Affordable Housing Units forming the RDL Works takes place **provided always** that if the Developer completes the RDL Works in stages and RDL (in its absolute discretion) accepts and takes beneficial occupation of any Affordable Housing Unit (whether or not actually so occupied), then the AH LADs Sum shall be reduced on a weekly basis by the same proportion as the relevant Affordable Housing Unit taken into

beneficial occupation by RHP. The parties acknowledge that RHP nor RDL is not obliged to accept any Affordable Housing Unit before Practical Completion of the RDL Works; or

- 14.11.2 fails to achieve Practical Completion of the Community Facility Works by the Community Facility Works Target Date (as extended by a Delaying Event in accordance with this Agreement) then the Developer shall pay to RDL within ten Working Days of a request by RDL to do so by way of liquidated damages the CF LADs Sum for each week or part week that Practical Completion of the Community Facility Works is delayed calculated from the Community Facility Works Target Date until the date on which Practical Completion for the Community Facility Works takes place provided always that if the Developer completes the Community Facility Works in stages and RDL (in its absolute discretion) accepts and takes beneficial occupation of any Community Facility or the Makerlab (whether or not actually so occupied), then the CF LADs Sum shall be reduced on a weekly basis by the same proportion as the relevant Community Facility or Makerlab (as applicable) taken into beneficial occupation by RDL and/or RHP. The parties acknowledge that neither RHP ~~net~~nor RDL is ~~not~~ obliged to accept any Community Facility or Makerlab before Practical Completion of the Community Facility Works."
- 14.12 In the event that the Developer fails to pay to RDL any LADs Sum that becomes to RDL pursuant to clause 14.10 RDL shall be entitled to:
- 14.12.1 set off any such LADs Sum from any payment that is or becomes due to the Developer; and/or
- 14.12.2 recover such LADs Sum from the Developer as a debt.
- 14.13 Notwithstanding any other provision of this Agreement, Practical Completion of the RDL Works shall not be deemed to have been achieved until the Developer has provided to RDL the final certificates issued by the Latent Defects Insurer in respect of the Affordable Housing Units.
- 14.14 Notwithstanding any other provision of this Agreement, Practical Completion of the Community Facility Works shall not be deemed to have been achieved until the Developer has provided to RDL the final certificates issued by the Latent Defects Insurer in respect of the Community ~~Facilities~~Facility Works.
- 14.15 Notwithstanding any other provision of this Agreement, Practical Completion of the Makerlab Works shall not be deemed to have been achieved until the Developer has provided to RDL the final certificates issued by the Latent Defects Insurer in respect of the Makerlab.
- 15 **Payments for RDL Works and Community Facility Works and Makerlab Works**
- 15.1 **RDL Works**
- The Affordable Housing Works Price shall be paid by RDL to the Developer in accordance with the provisions of Schedule 3.
- 15.2 **Community Facility Works**

Following the CF Payment Trigger Date, and in respect of Community Facility Works (including for the avoidance of doubt the Makerlab Works) that are carried out, the CF Works Price shall be paid by RDL in accordance with the provisions of Schedule 3.

16 **Variations**

16.1 **RDL Variations**

16.1.1 RDL's Representative on behalf of RDL shall be entitled at any time prior to the date of Practical Completion of the RDL Works or Community Facility Works or Makerlab Works submit a notice to the Developer in writing requesting:

- (a) the incorporation of additional works;
- (b) modifications to the RDL Works or Community Facility Works or Makerlab Works or any part or parts thereof; and/or
- (c) the use of alternative materials and/or goods,

(each being a **RDL Variation**).

16.1.2 The Developer shall, within ten (10) Working Days of receipt of a request for a RDL Variation pursuant to clause 16.1.1 and acting reasonably, provide in writing to RDL an estimate of the reasonable and proper cost and expenses associated with such RDL Variation identifying any delays to the RDL Works Target Date or Community Facility Works Target Date or Makerlab Target Date (as the case may be) or to Practical Completion arising as a result of undertaking such RDL Variation.

16.1.3 If RDL does wish to proceed with any such RDL Variation following receipt from the Developer of the information supplied pursuant to clause 16.1.2 RDL will respond as soon as reasonably practicable (the Parties acknowledging that that RDL may be making the request in the relation to the Community ~~Facilities~~ Facility Works at the request of the Council) and in any event within 17 Working Days Provided That if RDL does not respond with the said 17 Working Days period, the Developer will resend the information to the Director of Development at RDL (or such other person notified in writing by RDL to the Developer from time to time for these purposes) and if RDL does not respond within a further 10 Working Days RDL shall be deemed to not to wish to proceed with the variation; and

16.1.4 The RDL Works Target Date or the Community Facility Works Target Date or the Makerlab Target Date (as applicable) shall be adjusted to reflect the period of time notified in the Developer's notice issued pursuant to clause 16.1.2 or such other period of time as may have been agreed by the parties acting reasonably.

16.1.5 The Developer shall procure that any RDL Variations confirmed pursuant to clause 16.1.3 shall be incorporated as part of the RDL Works Community Facility Works or Makerlab Works (as applicable) and shall be carried out in accordance with the provisions of this Agreement.

16.2 Variations by the Developer

16.2.1 Variations not requiring approval

The Developer may make any variation, alteration, substitutions and additions to the RDL Works or Community Facility Works or Makerlab Works where it is required to do so in order to comply with any lawful requirement of any Relevant Authority or to comply with any Requisite Consent and the Developer shall notify RDL of any of these matters as soon as reasonably practicable in writing and no later than the next monthly project meeting.

16.2.2 Substituted materials

- (a) If at any time any materials specified in the Specification are in short supply or are, or become, unobtainable in the market at commercially reasonable rates and an adequate supply thereof cannot be guaranteed or are subject to delay and if awaited would materially impede the progress of the Works then, the Developer may, upon notification to RDL subject to clause 16.2.3, use alternative materials.
- (b) The Developer may substitute materials with those of a like nature or similar type, character or design to those specified in the Specification and such alternative material shall not in any case be of a lesser quality than or have materially inferior performance characteristics to those of the materials originally specified and the use of alternative materials shall not affect the suitability and use and enjoyment of the Works nor affect the long term maintenance costs of the Works nor their sales/values.

16.2.3 Variations requiring approval

Save for any variation, alteration, substitutions and additions falling within the provisions of clause 16.2.1. or 16.2.2 as and when the Developer wishes to make any variation, alteration, substitutions and additions to the Works, the Developer shall submit to RDL for approval (such approval not to be unreasonably withheld or delayed) working drawings, design calculations and detailed requirements developed by or on behalf of the Developer for the proposed variation, alteration, substitutions and additions as soon as is reasonably practicable.

17 Inspections

17.1 RDL and RDL's Representative shall have the right:

- 17.1.1 to inspect the Works upon reasonable prior notice at all reasonable times with a view to ascertaining whether the terms and conditions of this Agreement have been and are being duly observed and performed, subject to compliance by RHP and its agents/representatives with any site safety or other access requirements of the Developer and/or the Contractor;

- 17.1.2 to make representations to the Developer at regular stages during the Works and to contribute to snagging lists or lists of outstanding works the Developer shall comply with and take into account any such reasonable representations;
- 17.1.3 to attend and chair the monthly project meetings and the right to receive any relevant documents prior to a meeting taking place; and
- 17.1.4 to issue instructions requiring the Developer to provide samples of materials or open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated into the Works) or of any executed work. The reasonable cost of that opening up or testing (including the cost of making good) shall be borne by RDL unless the inspection or test shows that the materials, goods or work are not in accordance with this Agreement or unless the opening up for such inspection or test was reasonably required by reason of any similar, equivalent or associated work, materials or goods having been shown by a previous inspection or test not to be in accordance with this Agreement.
- 17.2 RDL and RDL's Representative shall be permitted to be accompanied by a representative of the Council on any inspection pursuant to 17.1.1 but for the avoidance of doubt, any Council representative shall not be permitted to issue instructions to the Developer.
- 18 **Defects**
- 18.1 A notice of Defects may be issued by RDL or RHP at any time during the Defects Liability Period where a Defect is discovered by RHP or RDL and such notice shall include all necessary contact details.
- 18.2 The Developer will procure that the Contractor carries out the rectification of Defects at no cost to RHP or RDL in accordance with the Defects Protocol and the Defects Response Times.
- 18.3 On or immediately before the expiry of the relevant Defects Liability Period, RDL's Representative shall:
- 18.3.1 inspect the Works;
- 18.3.2 establish any defects or faults which are attributable to the Developer's failure to comply with this Agreement; and
- 18.3.3 notify the Developer of any defects and faults that must be attended to.
- 18.4 The Developer shall within twenty eight (28) days of any notification pursuant to paragraph 17.5 make good the defects and faults at no cost to the RDL or RHP.
- 18.5 If the Developer does not comply with its obligations under this clause 18, then:
- 18.5.1 RHP or RDL may instruct others to rectify the defects;
- 18.5.2 the Developer shall reimburse RHP the full costs of such rectification; and/or

- 18.5.3 in respect of the RDL Works RDL shall be entitled to deduct the cost of the rectification works from the Retention and shall also be entitled to recover from the Developer any costs in excess of the Retention as a debt.
- 18.5.4 in respect of the Community Facility Works RDL shall be entitled to deduct the cost of the rectification works from the Retention and shall also be entitled to recover from the Developer any costs in excess of the Retention, as-
- 18.6 When in the opinion of RDL's Representative the defects or faults he required to be made good have been made good he shall issue the certificate of making good defects.
- 18.7 In the event of a dispute as to whether the certificate of making good defects should be issued in respect of the Development it shall be referred to dispute resolution in accordance with clause 28 of this Agreement.
- 18.8 Following the later of:
- 18.8.1 the expiry of the Defects Liability Period; and
- 18.8.2 the Developer procuring the rectification of any defects notified under this clause 18, the Developer may make an Application for Payment in respect of the balance of the Retention as held by RDL.

19 Insurance and indemnity

- 19.1 The Works, including all work executed and all unfixed materials and goods delivered to and intended for the Works, shall as regards loss or damage, be at the risk of the Developer until Practical Completion of the Works.
- 19.2 The Developer shall procure in relation to each Phase and from the Construction Commencement Date the taking out and maintenance of:
- 19.2.1 all risks insurance for the RDL Works, the Community Facility Works, the Makerlab Works and the Developer Works for no less than the full reinstatement value of the RDL Works, the Community Facility Works, the Makerlab Works and Developer Works carried out by the Developer (plus professional fees if any) and, all risks insurance on constructional plant, tools and equipment and other things for use in connection with the RDL Works, the Community Facility Works, the Makerlab Works and Developer Works including hired and/or owned property, both to be in the joint names of the Developer, the Contractor and RDL, and shall maintain such insurance up to the date of Practical Completion of the RDL Works, the Community Facility Works, the Makerlab Works and Developer Works (as the case may be);
- 19.2.2 public liability insurance for a minimum limit of indemnity of £10 million on an each and every claim basis;
- 19.2.3 employers' liability Insurance of not less than £25 million for all customary risks commensurate with the nature of the business undertaken and the number of persons employed by the Developers organisation;
- 19.2.4 product liability Insurance: not less than £10 million for each and every claim;

- 19.2.5 professional indemnity insurance for:
- (a) the Contractor in the sum of not less than £10 million; and
 - (b) the Professional Team in the sum of not less than £10 million for each member thereof;
- and in both cases for each and every Claim;
- 19.2.6 the insurance referred to in this clause 19.2 shall be placed with reputable insurers. The Developer will pay promptly all premiums in respect of all insurance required to be taken out by it and will when required so to do produce to RDL sufficient documentary evidence that each such insurance is being properly maintained; and
- 19.2.7 after any inspection required by the insurers in respect of a claim under the insurance referred to in clause 19.2.1 the Developer shall, with due diligence, procure the restoration or replace work or materials or goods damaged and dispose of any debris and proceed with and complete the RDL Works and will cause the proceeds of the insurance to be applied towards the reinstatement.

20 Sales and Overage

Sales

- 20.1 The sale and marketing of the units constructed as part of the Developer's Works shall be restricted to UK residents in the first six months following sales launch and the Developer shall use reasonable endeavours to target sales at local residents.

Pre-Emption

- 20.2 Where another registered provider of social housing is considering acquiring five (5) or more dwellings comprising the Developer Works from the Developer the Developer shall notify RHP and within 20 Working Days of such notification, RHP may submit an offer in writing to the Developer for such dwellings (the **RHP Offer**).
- 20.3 The Developer shall, within ten Working Days of receipt of the RHP Offer, confirm in writing whether it accepts the RHP Offer (the **RHP Acceptance Notice**) or rejects the RHP Offer (the **Rejection Notice**).
- 20.4 In the event the Developer serves an RHP Acceptance Notice in accordance with clause 20.3, the Developer and RHP shall within 40 Working Days of the RHP Acceptance Notice use reasonable endeavours to enter into such documentation as the parties agree (acting reasonably) for the disposal of relevant dwelling(s) to RHP with the total consideration and terms being as stated in the RHP Offer.
- 20.5 In the event the Developer serves a Rejection Notice in accordance with clause 20.3 above the Developer shall use reasonable endeavours to procure three independent valuations of the dwellings in question and shall deliver to RHP the said valuations within 30 Working Days of service of the Rejection Notice (or such other period agreed between RHP and the Developer), along with the mathematical average financial valuation of the three valuations (the **Average Valuation**).

- 20.6 In the event that the Average Valuation of the dwellings is the same or lower than the amount specified in the RHP Offer, the Developer and RHP shall use reasonable endeavours within 40 Working Days of RHP receiving the Average Valuation enter into such documentation as the parties agree (acting reasonably) for the disposal of relevant dwelling(s) to RHP with the total consideration and terms being as stated in the RHP Offer.
- 20.7 In the event the Average Valuation for the dwellings is higher than the amount specified in the RHP Offer, within twenty (20) Working Days of receipt of the Average Value issues pursuant to clause 20.5, RHP shall confirm to the Developer in writing whether or not it wishes to purchase the dwellings in question for the amount and on the terms specified in the Average Valuation (the **Confirmation Notice**).
- 20.8 In the event RHP issues a Confirmation Notice pursuant to clause 20.7, the Developer and RHP shall use reasonable endeavours to within 40 Working Days enter into such documentation as the parties agree (acting reasonably) for the disposal of relevant dwelling(s) to RHP for the disposal of the relevant dwellings with the total consideration and terms being as stated in the Average Valuation.
- 20.9 In the event RHP confirms it does not wish to purchase the dwellings it shall notify the Developer within 20 Working Days of receipt of the Average Valuation (**Refusal Notice**) and where a Refusal Notice is served or RHP fails to either issue a Confirmation Notice or to serve a Refusal Notice within the said 20 Working Day period the Developer shall be permitted to dispose of the Dwellings subject to the RHP Offer to a third party on the terms of the Average Valuation (or alternatively at a price which is more favourable to the Developer) (and otherwise on terms that are no more favourable to another registered provider of social housing than those set out in the Average Valuation) within a period of six months from service of the Refusal Notice.
- 20.10 For the avoidance of doubt:
- 20.10.1 after the said period of six months referred to in clause 20.9 has expired, the parties are to again comply with the provisions of clauses 20.2-20.9 inclusive; and
- 20.10.2 the Developer shall not be permitted to sell the dwelling subject to the RHP Offer for less than the figure or on terms that are more favourable to another registered provider of social housing than those set out in the Average Valuation, without first repeating the process in clauses 20.2-20.9.

Overage

- 20.11 The Developer shall comply with the provision of Schedule 2 (Overage).

21 **Variation to Building Lease**

On the date falling 30 Working Days after the date of Practical Completion of the Works or relevant Section, RHP and the Developer shall enter into the Deed of Variation in respect of the Section(s) that have so reached Practical Completion.

22 **Affordable Housing**

- 22.1 The Affordable Housing Package Price for any Phase shall be calculated following the grant of the Satisfactory Planning Permission applying the price/tenure mix matrix set out in Appendix 17.
- 22.2 On the date of this Agreement, RHP shall pay the Affordable Housing Deposit which shall be held as stakeholder by the Developer's Solicitors,
- 22.3 RHP shall pay the Affordable Housing Land Price to the Developer upon the grant of each Affordable Housing Underlease such lease to be granted on the date following 20 Working Days after certification by RDL's Representative that Golden Brick has been achieved of the relevant Section pursuant to clauses 22.4 and 22.5.
- 22.4 The Developer shall:
- 22.4.1 give at least ten (10) Working Days' prior written notice to RDL and the RDL's Representative of the date on which the Developer anticipates a Section of the Affordable Housing Works will reach Golden Brick; and
- 22.4.2 propose a date and time (to be mutually agreed) for RDL, the RDL's Representative and/or any person authorised by RDL to accompany the Developer to inspect the relevant Affordable Housing Works so that RDL's Representative can confirm whether the relevant Section of the Affordable Housing Works has reached Golden Brick.
- 22.5 Within five Working Days following the inspection described at clause 22.4, RDL's Representative may submit to the Developer comments in writing as to whether or not it considers that Golden Brick has been achieved in relation to that Section. The Developer shall forthwith carry out such works so that the relevant Section of the Affordable Housing Works achieves Golden Brick and the procedures in clauses 22.4 shall be repeated until RDL's Representative confirms that Golden Brick has been achieved.
- 22.6 The provisions of clause 32 (Conditions of Sale) shall apply to grant of the Affordable Housing Underlease (*mutatis mutandis*).

The Developer shall at its own cost use reasonable endeavours to assist RHP as soon as reasonably practicable in respect of any requisitions raised by the Land Registry in connection with any plans used for the Affordable Housing Underlease (or any subsequent rectifying documents) including (without limitation) producing and re-executing any required substitute plans.

22A **Makerlab**

- 22A. No deposit is payable for the Makerlab and/or the Makerlab Works.
- 22A.2 RHP shall pay the £1 (one pound) to the Developer upon the grant of each Makerlab Underlease such lease to be granted on the date following 20 Working Days after certification by RDL's Representative that Golden Brick has been achieved of Makerlab.
- 22A.3 The Developer shall:

- 22A.3.1 give at least ten (10) Working Days' prior written notice to RDL and the RDL's Representative of the date on which the Developer anticipates the Makerlab Works will reach Golden Brick; and
- 22A.3.2 propose a date and time (to be mutually agreed) for RDL, the RDL's Representative and/or any person authorised by RDL to accompany the Developer to inspect the relevant Makerlab Works so that RDL's Representative can confirm whether the Makerlab have reached Golden Brick.
- 22A.4 Within five Working Days following the inspection described at clause 22A.3. RDL's Representative may submit to the Developer comments in writing as to whether or not it considers that Golden Brick has been achieved in relation to the Makerlab Works. The Developer shall forthwith carry out such works so that the Makerlab achieves Golden Brick and the procedures in clause 22A shall be repeated until RDL's Representative confirms that Golden Brick has been achieved.
- 22A.5 The provisions of clause 32 (Conditions of Sale) shall apply to grant of the Makerlab Underlease (mutatis mutandis).

23 Option in respect of Option Property and Option Additional Units

- 23.1 Prior to, or as soon as reasonably practicable following the grant of Satisfactory Planning Permission, RHP shall supply to the Developer the Option Property Requirements;
- 23.2 As soon as reasonably practicable following the grant of Satisfactory Planning Permission and receipt of the Option Property Requirements the Developer shall supply to RHP the Option Property List.
- 23.3 The specification of the Dwellings comprising the Option Property shall be equivalent to the Developer Works Specification.
- 23.4 Subject always to clause 23.3 the Developer may make such modifications to the design and specification of the Option Property:
- 23.4.1 as may be required by any competent authority or which the Developer (acting reasonably) deems to be necessary or desirable in order to procure or comply with any statutory requirements; and/or
- 23.4.2 If any materials or items within the Developer Works Specification shall not be procurable within a reasonable time or at a reasonable cost or do not comply with any relevant statutory requirements the Developer shall be at liberty to substitute such other materials or items of no lesser quality and standard as may be requisite to complete the construction of the relevant Dwelling; and
- 23.5 The Developer shall (acting reasonably) be entitled to vary the specification for and/or the design of the block in which any Dwelling comprising the Option Property is located and/or the Estate (subject to any other relevant clauses of this Agreement) provided that in the event of there being any such variation it does not:
- 23.5.1 significantly and substantially reduce the value of the relevant Dwelling(s); or

- 23.5.2 materially increase the costs of maintenance and/or management payable by the relevant Dwelling(s); or
- 23.5.3 alter the relevant Dwelling so as to significantly and substantially impact on the intended beneficial use and enjoyment of the relevant Dwelling(s).
- 23.6 In consideration of £10 paid by RHP to the Developer, the Developer grants to RHP the Option in respect of the Option Property.
- 23.7 RHP may exercise the Option in respect of one or more Dwellings comprising the Option Property at any time during the Option Period by service of notice in writing on the Developer referring to this clause 23 (the **Option Notice**). For the avoidance of doubt, RHP may serve any number of Option Notices in the Option Period.
- 23.8 In the event that RHP serves an Option Notice then on the Option Completion Date:
- 23.8.1 the Developer will enter into a Merger Deed in respect of those parts of the Option Property that comprise houses; and
- 23.8.2 the Developer will grant to RHP a Sale Lease in respect of those parts of the Option Property that comprise flats.
- 23.9 On the Option Completion Date, RHP will pay to the Developer the Option Discounted Price in respect of any Dwellings for which RHP has served an Option Notice.
- 23.10 In the event that RHP is satisfied that any Dwelling within the Option Property is no longer required to satisfy the Option Property Requirements or that RHP has decided it no longer wishes to exercise this Option in respect of such Dwelling, RHP may release such Dwelling from the Option.
- 23.11 For avoidance of doubt, RHP may only exercise the Option in respect of the Option Property for the purposes of rehousing the Residents. This clause does not apply to any Option Additional Unit.
- 23.12 Separately from the Option Property, RHP may exercise the Option over the Option Additional Units Provided That:
- 23.12.1 RHP intends to use any Option Additional Unit for the purposes of providing affordable housing;
- 23.12.2 where any Option Additional Unit is part of the same core as private sale dwellings, such Option Additional Unit may only be utilised for shared ownership.
- 23.12.3 the assurance of the Option Additional Units to RHP shall contain such covenants as the Developer may reasonably require to ensure compliance with clauses 23.12.1 and 23.12.2 hereof
- and the provisions of clauses 23.2, 23.8 and 23.9 (mutatis mutandis) shall apply to the Option in respect of the Option Additional Units.

24 Grant of Housing Unit Transfers

24.1 The Developer may by notice in writing (which notice may be served by email) require RHP to enter into a Housing Unit Transfer with an individual purchaser so identified by the Developer such Housing Unit Transfer to have embedded within it a merger of that portion of the Building Lease comprised in it on the following terms:

"the Developer transfers and merges to RHP the Dwelling the subject Housing Unit Transfer to the intent that the term of years granted by the Build Lease so far as it concerns the Dwelling the subject Housing Unit Transfer may merge and be extinguished in the reversion immediately expectant thereon;

24.2 *RHP hereby releases the Dwelling the subject Housing Unit Transfer from the provisions contained in the Building Lease and any vendor's lien created thereby."*

RHP shall supply the Developer with a properly executed Housing Unit Transfer within 15 working days of receipt of the same (provided always that such Housing Unit Transfer shall not be released for completion until the relevant Dwelling has been practically completed) and shall arrange for the delivery to the Developer of any necessary Forms RX4 and/charge releases on or prior to the legal completion date for the Dwelling concerned.

24.3 The Developer shall indemnify RHP in respect of any claim, demand or action brought by any transferee pursuant to a Housing Unit Transfer and arising prior to the Merger Date.

25 Merger

25.1 On the Merger Date the Developer and RHP shall in consideration of £1 enter into the Merger Deed.

25.2 The parties confirm that:

25.2.1 RHP served on the Developer a notice dated 11 May 2021 in accordance with section 38A(3)(a) of the Landlord and Tenant Act 1954 in respect of the tenancies to be granted by the Building Lease; and

25.2.2 the Developer or a person duly authorised by the Developer made a statutory declaration dated 1 October 2021 in accordance with paragraph 4 of Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

25.3 The Merger Deed shall be completed at the offices of the RHP's Solicitors or at such other place in England and Wales as RHP's Solicitors reasonably require.

26 Estate Management

26.1 Following the Merger Date, the parties acknowledge that it is the intention for RHP to manage the common parts of the Estate, including the internal common parts of any block comprising the Developer Works.

26.2 RHP and the Developer will as soon as reasonably practicable after the date of this Agreement use all reasonable endeavours to agree the strategy for the management of

the estate common parts forming part of the Development (**Estate Management Strategy**) and the service charges to be charged arising from the Estate Management Strategy.

26.3 Following agreement of the Estate Management Strategy RHP and the Developer will use reasonable endeavours to:

26.3.1 agree any required changes to any Building Lease already granted;

26.3.2 agree the form of lease on which the Developer will dispose of the Dwellings constructed as part of the Developer Works;

26.3.3 agree the form of Sale Lease.

27 **Planning Obligation**

27.1 In the event that the Local Planning Authority requires that a Planning Agreement is to be entered into with it or any other Relevant Authority RHP will at the request and reasonable expense of the Developer enter into such agreement and/or agreements Provided Always that the Planning Agreement is in a form as shall be approved by RHP (such approval not to be unreasonably withheld or delayed) and in the event of any dispute in relation to this clause such dispute shall be referred for determination in accordance with the provisions of clause ~~27~~28.

27.2 RHP warrants that RHP is a registered provider as defined in the Housing and Regeneration Act 2008.

27.3 Save as provided for in clause 27.4 the Developer covenants with RHP and its successors in title to the Estate that it shall observe and perform all the obligations contained in the Planning Agreement and the Developer shall indemnify and keep indemnified RHP in respect of any liability whatsoever arising out of a breach or non-observance of this covenant unless such liability results from the actions or omissions of RHP.

27.4 RHP covenants with the Developer to comply with the provisions of the Planning Agreement insofar as they relate to the use and occupation of the Affordable Housing Units and are subsisting and capable of being enforced and RHP shall indemnify and keep indemnified the Developer in respect of any liability whatsoever arising out of a breach or non-observance of this covenant.

27.5 The Developer covenants with RHP and RDL and its successors in title to the Estate that the Developer shall indemnify and keep indemnified RHP in respect of any CIL Liability in respect of the Development provided that RHP shall co-operate and use reasonable endeavours to assist the Developer to achieve any available reliefs in respect of CIL.

27.6 The Developer covenants with RHP that it shall not seek any variation to the Planning Agreement relating to the Development without the written consent of RHP (such consent not to be unreasonably withheld or delayed).

27.7 RHP agrees and undertakes not to make any objection to any planning applications which may be submitted to the Local Planning Authority from time to time by or on behalf of the Developer for planning permission for the Development under the terms of this Agreement

and/or any amendments or variations to the Planning Agreement in relation to the Development or any part or parts of it.

28 **Disputes**

28.1 In the event of any dispute arising relating to the RDL Works, Community Facility Works or Makerlab Works or the terms of this Agreement including without limitation whether a Planning Permission and/or Planning Agreement contains an Onerous Condition, the parties shall endeavour to resolve the dispute by agreement as quickly as possible but if the dispute has not been resolved within ten Working Days it shall be referred (in the absence of any express provision to the contrary) to an Independent Person appointed jointly by the Developer and RHP.

28.2 The Independent Person is to have at least ten years relevant post qualification experience and his identity shall be agreed between the Developer and RHP.

28.3 If the parties cannot agree on the Independent Person's identity the Independent Person is to be appointed at the request of either the Developer or RHP by the president or chairman for the time being of whichever of the following bodies is most appropriate having regard to the nature of the dispute:

28.3.1 The Royal Institution of Chartered Surveyors;

28.3.2 The Royal Institute of British Architects;

28.3.3 The Institution of Electrical Engineers;

28.3.4 The Institution of Structural Engineers;

28.3.5 The Institute of Chartered Accountants in England and Wales; or

28.3.6 The Law Society of England and Wales.

28.4 The Independent Person is to act as an expert and the following provisions shall apply:

28.4.1 the Independent Person shall be instructed to allow each party to make representations and counter-representations as to the matters in dispute and to give them due consideration (but the Independent Person is not to be bound by them);

28.4.2 the Independent Person shall be instructed to give his decision as quickly as possible in writing with copies being sent simultaneously to the Developer and RHP and to give reasons for his decision;

28.4.3 the Independent Person's determination shall be final and binding on the parties (except in cases of manifest error);

28.4.4 if the Independent Person dies, delays or becomes unwilling or incapable of acting, either party may ask the President to discharge and replace the Independent Person; and

28.4.5 the costs of the appointment of the Independent Person shall be paid by parties in the proportions that the Independent Person decides or in the absence of any such decision from the Independent Person in equal shares.

28.5 Where costs of the Independent Person remain unpaid by the party liable to pay them pursuant to this clause, the other party may discharge those costs and recover the sum so paid from the defaulting party as a debt on written demand.

28.6 Notwithstanding any other provision in this agreement, any party to this agreement may refer any difference or dispute arising under this agreement in relation to the Works at any time to adjudication. Subject to clause 28.7, any such adjudication shall be governed by the Scheme set out in part 1 of the Schedule to the Scheme for Construction Contract (England and Wales) Regulations 1998 (as amended) (the **Scheme**).

28.7 For the purposes of the Scheme, the adjudicator shall, unless otherwise agreed between the parties, be nominated by the Chairman from time to time of the Royal Institution of Chartered Surveyors.

29 **RHP Obligations**

29.1 RHP shall as owner of the Estate (following the grant of the Building Lease), give such assistance to the Developer as reasonably required and at the Developer's cost in order for the Developer to deliver the Development and in particular RHP shall at the Developer's request enter into any leases with electricity suppliers for the provision of substations on the site or deeds of easements and wayleaves or other agreements (including but not limited to diversion agreements and adoption agreements) required by utility suppliers (including any ESCO) or any agreement with a local highways authority in respect of the delivery of any estate roads, but only if:

29.1.1 it does so in its capacity as landowner only;

29.1.2 it does not incur:

- (a) any obligation to carry out the Development;
- (b) any liability arising out of the Development;
- (c) obligation to pay money; and

29.1.3 it is on terms which are approved by RHP (such approval not to be unreasonably withheld or delayed).

29.2 RHP shall provide all such reasonable assistance as the Developer shall reasonably require in respect of any planning conditions or obligations which relate to the ongoing operation of the Development after Practical Completion of the RDL Works and which are required to be discharged prior to occupation of any part of the Estate.

30 **Notices**

30.1 All notices shall be in writing and shall be duly and validly given or made if:

30.1.1 given or served by personal delivery or sent by special or recorded signed for delivery mail to the persons and the addresses supplied below;

30.1.2 notices to be served on the Developer shall be sent to:

Amanda Miller, Legal Director at Hill Residential Limited, The Power House,
Gunpowder Mill, Powdermill Lane, Waltham Abbey, Essex EN9 1BN;

30.1.3 notices to be served on RHP and/or RDL shall be sent to:

Executive Director of Development at Richmond Housing Partnership 8
Waldegrave Road Teddington TW11 8GT; and

30.1.4 notices to be served on RDL's Representative shall be sent to such named
contact at the organisation named from time to time by RHP to fulfil the role of
RDL Representative.

30.2 Notices sent by special or recorded signed for delivery mail shall be deemed to be given
or served on the second Working Day after the date of posting unless they are proved to
have been received later in which case they shall be treated as given or served on receipt.

30.3 Notices shall not be sufficiently served if only sent by email (unless expressly stated to the
contrary).

31 **Title to the Property**

31.1 RHP grants each Building Lease on the relevant Building Lease Completion Date with full
title guarantee subject to (and where applicable with the benefit of):

31.1.1 all Local Land Charges whether registered at the date hereof and to all matters
capable of registration as Local Land Charges whether or not actually so
registered;

31.1.2 all rights of way water and drainage and other easements or quasi-easements
(if any) affecting the Property or any part thereof;

31.1.3 matters contained in the Title Numbers insofar as they relate to the Property
and are subsisting and capable of being enforced save any financial
encumbrances or any cautions or restrictions;

31.1.4 any wayleaves or easements which have already been granted or which may
be granted by RHP with the prior approval of the Developer (which approval
shall not be unreasonably withheld or delayed where such wayleaves or
easements shall not adversely affect the value use and enjoyment of the
Property) after the date hereof but before completion of the Building Lease in
over and under or upon the Property in favour of the statutory undertakers
service companies or authorities (including British Telecom) for providing water
gas electricity cable television and telephone services to the Development;

31.1.5 any matters which are unregistered interests which override registered
dispositions under Schedule 3 Land Registration Act 2003;

31.1.6 the terms of any Planning Agreement and Planning Permission; and

31.1.7 those matters contained and referred to in the Building Lease,

and RHP confirms that it has disclosed full and accurate details of all of the matters referred to in this clause 31.1 of which it is aware and RHP shall disclose full and accurate details of any new such matters of which it becomes aware before the relevant Building Lease Completion Date.

31.2 The Developer shall be deemed to take the relevant Building Lease with knowledge and notice of matters referred to in clause 31.1 and shall raise no requisition on them except in respect of matters arising from any pre-completion searches, enquiries and requisitions in the period between the date of this Agreement and the Building Lease Completion Date.

31.3 This Agreement incorporates the entire contract between the parties and the Developer acknowledges that it has not entered into this Agreement relying upon any representations by or on behalf of RHP save for RHP's Solicitors written statements made and documents provided to the Developer's Solicitor before the date of this Agreement (including for the avoidance of doubt contained in any replies to enquiries received from RHP's Solicitors or in replies to the CPSE suite of documents provided).

31.4 For the avoidance of doubt the Developer has satisfied itself in relation to any rights of light as may affect the Property and the Developer shall raise no requisition on such matters (if any) in the period between the date of this Agreement and the Building Lease Completion Date

32 **Conditions of sale**

The Property is let subject to the Conditions so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with the provisions of this Agreement.

33 **Condition of Property**

33.1 Without limiting the generality of any other provisions of this Agreement the Developer acknowledges that RHP gives no warranty or representation as to the presence on or absence from the Property of any Dangerous Substances nor of any potential Environmental Liabilities in relation to the Property nor of the accuracy of any Environmental Information and the Developer relies on any such information solely at its own risk

33.2 The Developer shall:

33.2.1 comply with any remediation plan for the Property agreed and forming part of the Satisfactory Planning Permission (if any); and

33.2.2 give to RHP, within ten Working Days of receipt, a copy of any relevant certification that the remediation works (if any) have been carried out or other evidence of discharge in respect of the relevant planning conditions relating to remediation works.

34 **Assignment**

34.1 The Developer shall not transfer assign or novate the whole or part of this Agreement without RHP's or RDL's written consent, not to be unreasonably withheld or delayed provided that no consent shall be required for:

34.1.1 an assignment of the benefit of this Agreement to a Suitable Substitute or Representative made at the same time as delivery of the deed of covenant referred to in clause 34.4; and

34.1.2 an assignment of the benefit of this Agreement by way of security to a Funder.

34.2 The Developer shall not charge the benefit of this Agreement except to a Funder.

34.3 Any assignment or charge made in accordance with this clause 34 shall be notified to RHP and RDL in writing.

34.4 RHP shall be entitled to assign this Agreement to a Group Entity or by way of the transfer of engagements or merger in accordance with the provisions of the Industrial and Provident Societies Act 1965/Cooperative and Community Benefit Societies Act 2014.

35 **Energy Arrangements**

35.1 The parties acknowledge that as at the date of this Agreement there is no agreed strategy for the provision of heat and/or power to the Estate.

35.2 As soon as reasonably practicable (and before the Phase 1 Completion Date) the Developer shall provide to RHP and RDL details of its proposed heat strategy to serve the Dwellings including the terms of any utility agreement(s) and/or any concession agreement(s) and/or any supply agreement(s) for comment.

35.3 The Developer shall use reasonable endeavours to reflect RHPs and RDL's reasonable representations following a review of the heat strategy. For the avoidance of doubt, the Developer has committed to deliver the heat strategy in line with Good Industry Practice and CP1 Heat Networks Code of Practice (2020), where relevant, and where RDL's/RHPs representations exceed this RDL will be responsible for such costs.

35.4 Where appropriate (and insofar as provisions are not already set out) the Building Lease and each Affordable Housing Underlease shall be amended to deal with the management of the heating system and the payment of service charge, such provisions/strategy to include (without limitation):

- (a) arrangements to provide that the occupiers of the Dwellings and Community Facilities and the Makerlab are billed directly in respect of the utility charges and for the avoidance of doubt the costs of the heat will not be charged to RHP through the Affordable Housing Underlease other than those charges relevant to the Registered Housing Provider and required by law;
- (b) obligations to ensure the supply of the relevant utility services to the Property in line with Good Industry Practice;
- (c) utility charges that are in line with and equivalent to cost comparisons (undertaken annually) based on a sample of similar Dwellings in the local area using industry accepted comparators for the heating system employed on a like for like basis over the same period;
- (d) separate metering and billing for every resident and Landlord supply;

- (e) separate contracts between supplier and residents (such that RHP shall have no liability for occupiers' non-payment);
- (f) may include a requirement for RHP to facilitate any arrangement (which may include liabilities) where required to accommodate any matters specifically requested and accepted by RHP;
- (g) responsibility for maintenance of plant and how this is managed and charged for which may include the accumulation of an appropriate sinking fund collected via the heat charges which for the avoidance of doubt does not preclude the collection of a special levy for exceptional maintenance requirements; and
- (h) if there is to be a separate utility agreement with a service provider then the Developer shall provide updates to RHP and give RHP the opportunity to make reasonable representations regarding the form of such agreement.

35.5 The Developer will use reasonable endeavours to obtain best value and take into account any representations of RHP and RDL.

36 Termination

36.1 Right to terminate

36.1.1 If the Developer or any Guarantor:

- (a) suffers an Insolvency Event;
- (b) is in material breach of any of its obligations under this Agreement which is capable of remedy but the Developer has not remedied the breach within such period as is reasonable in all the circumstances having regard to the nature of the breach but in any event being not less than 30 Working Days;
- (c) is in material breach of any of its obligations under this Agreement which is not capable of being remedied;
- (d) does not achieve Practical Completion of the RDL Works by the RDL Works Longstop Date; or
- (e) does not achieve Practical Completion of the Community Facility Works by the Community Facilities Longstop Date;
- (f) does not achieve Practical Completion of the Makerlab Works by the Makerlab Works Longstop Date.,

then subject to clauses 37 and 38 RHP may serve notice in writing on the Developer and the Guarantor to terminate this Agreement.

36.1.2 If the Developer has not achieved Start on Site by 1 December 2022 (or such later date as may be agreed by RHP in its absolute discretion and notified to the Developer) RHP shall use reasonable endeavours to negotiate a start date extension with the GLA to 31 March 2023 or such later date as the Developer and RHP agree **provided that** in the event that:

- (a) RHP is unable to agree such extension within a further period of 2 months from 1 December 2022; or
- (b) the GLA will not confirm any extension;

then RHP may serve a notice (the **Failure to Commence Notice**) in writing on the Developer and Guarantor to terminate this Agreement

36.1.3 If a Failure to Commence Notice is served on the Developer then RHP shall pay the Developer's reasonable, proper and evidenced costs incurred in obtaining the grant of a Satisfactory Planning Permission up to the value of £500,000 and such payment shall be due within 60 Working Days of the date of the Failure to Commence Notice. For the avoidance of doubt any payment under this clause 36.1.3 is only payable if there is in place a Satisfactory Planning Permission.

36.2 If this Agreement is terminated under this clause:

36.2.1 the Developer forfeits its interest in the Property and in any works done under this Agreement; and

36.2.2 if in occupation, the Developer shall immediately deliver up vacant possession of the Property provided that:

- (a) RHP and the Developer acknowledge that at the date of termination the Contractor may be in occupation of the Property and the Developer will use all reasonable endeavours to end the Contractor's occupation as soon as possible, unless RHP agrees otherwise in writing; and
- (b) the delivery of vacant possession shall be subject to any completed agreements relating to the infrastructure and any completed sales of Dwellings.

36.2.3 the Developer shall if required to do so by RHP assign all rights of action it may have against any subcontractors or consultants employed by the Developer absolutely (except where RDL already benefit from Collateral Warranties and/or third party rights against such persons).

36.3 **Novation of Plot Contracts**

On termination of this Agreement under this clause 36 RHP shall use reasonable endeavours to conclude novation arrangements with any purchaser of a Dwelling from the Developer who has at the date of such termination exchanged a plot agreement for the purchase of such Dwelling subject to RHP having first approved the form of plot agreement and settled the terms of such novation agreement (both parties acting reasonably). On completion of any such novation the deposits paid under such agreements will be assigned to RHP.

36.4 **Step in**

36.4.1 If RHP intends to determine this Agreement pursuant to clause 36.1 it must first serve written notice of such intention on any Funder (and with a copy sent to

the Developer and the Guarantor if not already served) specifying the breach and (if capable of remedy) RHP's assessment of the remedy required (the **Funder Breach Notice**) and clauses 36.4.2 – 36.4.5 shall apply.

36.4.2 If during the Step In Period:

- (a) the Funder or the Developer procures the remedy of the breach alleged in the Funder Breach Notice to the reasonable satisfaction of RHP;
- (b) the Funder serves on RHP a Step In Notice and complies with clause 36.4.3;
- (c) the Funder produces to RHP a proposed Suitable Substitute who enters into a deed of covenant with RHP (and in a form acceptable to RHP acting reasonably) in order that the Suitable Substitute covenants to comply with the obligations on the part of the Developer contained in this Agreement; or
- (d) it is subsequently agreed during the Step In Period between RHP and the Funder (or determined pursuant to clause 28) that there are no circumstances in respect of the breach alleged in the Step In Notice entitling RHP to terminate the Agreement,

then RHP shall cease to have the right to determine this Agreement for the breach alleged in the Funder Breach Notice.

36.4.3 A Step In Notice shall be accompanied by a deed of covenant by the Representative to RHP to observe and perform the relevant obligations of the Developer pursuant to this Agreement from the date of the Step In Notice and any subsequent completion of a deed of covenant with a Suitable Substitute shall release the Representative from any obligations it may have pursuant to the covenant given in a Step In Notice from the date the deed of covenant is entered into with the Suitable Substitute.

36.4.4 If at the expiration of the Step In Period (time being of the essence) RHP's right to determine this Agreement in respect of the matters referred to in the Funder Breach Notice subsists the RHP shall be at liberty to terminate this Agreement on giving written notice to the Developer and the Guarantor.

36.4.5 Unless the Funder exercises its rights in this clause 36.4 nothing shall oblige or require the Funder to observe and perform the covenants and obligations of the Developer under this Agreement.

36.4.6 The determination of this Agreement will not prejudice any rights or remedies which the either party may have against the other in respect of outstanding breaches of this Agreement and will be without prejudice to clause 37.

37 **Compensation Sum**

37.1 Following termination RHP shall take such steps as it considers appropriate (in RHP's sole discretion) to procure that the RDL Works, the Developer Works, Makerlab Works and the Community Facility Works reach Practical Completion (and for these purposes

this means Practical Completion under the Building Contract or such other building contract as RDL shall place for the RDL Works, the Community Facility Works, Makerlab Works and the Developer Works).

37.2 The parties acknowledge that if RDL have not procured Practical Completion of the RDL Works, the Community Facility Works, Makerlab Works and the Developer Works by the date which is 96 months (the **Required Date**) after the date of termination then Practical Completion shall be deemed to have occurred.

37.3 Following the Practical Completion of the RDL Works and the Developer Works, Makerlab Works and the Community Facility Works (or if earlier the occurrence of the Required Date):

37.3.1 RDL, RHP and the Developer shall seek to agree the Compensation Sum as soon as possible and in the absence of agreement to be determined in accordance with clause 28; and

37.3.2 no later than 30 Working Days after the Compensation Sum is agreed or determined then RHP shall pay the Compensation Sum inclusive of VAT to the Developer.

37.4 The provisions of this clause 37 shall not apply in the event this Agreement is terminated as a result of a Developer Insolvency Event and for the avoidance of doubt RHP shall not be liable to pay the Compensation Sum.

38 Compensation for non-delivery of RHP's Phase 2 Conditions and/or RHP's Phase 3 Conditions

38.1 The Parties acknowledge that the Affordable Housing Package Price arrived at incorporates a subsidy relying on the completion of the Development in order to be financially viable for the Developer and the Parties have consequently agreed the provisions of this clause 38 to cater for the eventuality that Phases 2 and / or Phase 3 do not proceed arising from the failure of RHP to discharge the RHP Phase 2 Conditions and / or RHP Phase 3 Conditions (as the case may be).

38.2 Forthwith following this Agreement determining by virtue of the failure to satisfy the RHP Phase 2 Conditions and / or RHP Phase 3 Conditions (as the case may be), the Developer shall produce on an open book basis a spreadsheet (**Compensation Spreadsheet**) with any necessary accompanying evidence showing the deficit suffered by the Developer by virtue of Phase 2 and / or Phase 3 (as the case may be) failing to proceed (**Compensation Amount**).

38.3 The information produced by the Developer pursuant to clause 38.2 shall be produced on the basis of the Financial Model, and a return to the Developer of a gross profit equal to 17.5% calculated on the Market Value of the Dwellings constructed at the time of the calculation.

38.4 By way of illustration of the methodology of the calculation in this clause 38, the Parties have agreed two worked examples as follows :

Worked example 1:

Phase 1 – Private Dwellings OMV in Phase – £2,894,000

Target outturn position - £506,450 (£2.894m x 17.5%)

Completion of Phase 1 financial position - £6.436 million negative

Therefore, the balance payment required is £6,942,450.

Worked example 2:

Phases 1 and Phase 2 – OMV in those 2 Phases - £42,548,500

Target outturn position - £7,445,987 (OMV x 17.5%)

Completion of Phase 2 financial position – Positive £1,832,000

Therefore, the balance payment required is £5,613,987

- 38.5 RHP shall have a period of 20 Working Days from receipt of the Compensation Spreadsheet to request any further information to verify the numbers contained in it.
- 38.6 RHP shall within 10 Working Days of the expiry of the period referred to in clause [38.4](#) [38.5](#), serve written notice on the Developer either agreeing the Compensation Spreadsheet or disputing it, failing which RHP shall be deemed to agree the Compensation Spreadsheet.
- 38.7 In the event that RHP serves notice pursuant to clause [38.5](#)[38.6](#) disputing the Compensation Spreadsheet then such dispute shall be resolved by an independent expert in accordance with the provisions of clause 28 hereof.
- 38.8 RHP shall pay to the Developer the Compensation Amount within 15 Working Days of its agreement (deemed or otherwise) or as determined pursuant to clause [38.6](#)[38.7](#) hereof.

39 Rights of Light

- 39.1 RHP will procure that the Council waives any rights of light it benefits from over the Estate in accordance with the terms of the Collaboration Agreement.

40 General

- 40.1 Where the context so admits the provisions of this Agreement shall remain in full force and effect notwithstanding completion of the Building Lease (or any one of them) in so far as they remain to be observed and performed.
- 40.2 The failure by either party to enforce at any time for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all or any terms and conditions of this Agreement.
- 40.3 In the case of any discrepancy between the Plans and Specifications and/or the terms of this Agreement the order of priority shall be the terms of this Agreement and then the Plans and Specifications.

40.4 To the extent (if any) that any Plans and Specifications attached to or referred to in this Agreement show the layout design or nature of the Development they are for illustrative purposes only and the Developer may in their discretion vary such layout design or nature provided that such variation does not have a material adverse effect on RHP's interest.

41 **Documents**

41.1 RHP shall on written request be entitled to be supplied by the Developer with two sets of copies of the Plans and Specifications (as amended). Further requests by RHP for additional copies of the Plans and Specifications shall be at RHP's sole cost.

41.2 A minimum of three months prior to each of the RDL Works and/or the Community Facility Works, Makerlab Works (as applicable) being Practically Completed the Developer shall provide the following:

41.2.1 a 1:200 site layout suitable for marketing material;

41.2.2 1:50 general arrangement floor layouts and elevations with technical overlays removed (for marketing purposes) for each building type;

41.2.3 landscape drawings;

41.2.4 a planting schedule;

41.2.5 an external finishing schedule;

41.2.6 predicted energy assessment for each residential unit; and

41.2.7 a 1:500 plan for each dwelling and or unit suitable for conveyancing purposes.

41.3 The Developer grants to RHP an irrevocable royalty-free non-exclusive licence to use and reproduce the Documents for any purpose connected with the Community Facility Works, RDL Works and Developer Works, Makerlab Works including, the execution completion maintenance letting management sale advertisement alteration extension reinstatement and repair of the Affordable Housing Units, the Developer Works, Makerlab Works or the Community Facility Works or any part. Such licence will be on such terms as the Developer can reasonably secure from the Architect or other Professional Team member and if possible shall carry the right to grant sub licences and shall be transferrable to third parties. The Developer shall not be liable for any use of the Documents for the purposes other than for which they were prepared and provided by the Developer.

42 **Confidentiality**

No party shall without the approval of the other parties (such approval not to be unreasonably withheld or delayed) disclose the terms of this Agreement save that either party may, to the extent necessary, disclose such information:

42.1 to its employees, officers, representatives, advisers, prospective purchasers and funders;

42.2 the Council;™

42.3 as may be required by law or by any relevant listing authority, Greater London Authority, Homes England or Regulator of Social Housing; or

42.4 to the extent necessary in order to carry out the Development.

43 **Severability**

If any provision of this Agreement is declared to be invalid or unenforceable it shall not affect the validity or enforceability of the remaining provisions of this Agreement.

44 **Guarantor's Covenants**

44.1 In consideration of RHP entering into this Agreement at the request of the Developer, the Guarantor undertakes with and guarantees to RHP by way of primary obligation that the Developer will pay the First Payment and Second Payment on the due date in the case of the Developer's default and make good to RHP forthwith any proper costs claims demands expenses and/or liability to RHP or RDL arising out of such default.

44.2 The Guarantor waives any right to require RHP to proceed against the Developer to pursue any other remedy of any kind which may be available to RHP before proceeding against the Guarantor.

44.3 RHP shall take reasonable steps to mitigate any loss, damage, claim, costs or expenses arising as a result of the Developer or the Guarantor's failure to perform any obligations and in any proceedings brought by RHP or RDL under this clause the Guarantor shall be entitled to rely on:

44.3.1 the equivalent rights in defence of liability as the Guarantor would have been able to raise against RHP were it to have been the Developer under this Agreement; and

44.3.2 any counterclaim that the Developer has against RHP.

44.4 The Guarantor acknowledges and accepts that none of:

44.4.1 any neglect or forbearance on the part of RHP in enforcing or giving time for or other indulgence in respect of the observance or performance of any of the obligations on the part of the Developer;

44.4.2 the fact that the Developer or RHP may have assigned or purported to assign its interest under this Agreement; or

44.4.3 any variation of the terms of this Agreement made with the consent of the Guarantor,

shall in any way affect the liability of the Guarantor and the Guarantor shall (where requested by RHP) confirm this in any variation or assignment or waiver of this Agreement

44.5 The Guarantor covenants with RHP to indemnify RHP against all reasonable and proper losses, damages, costs and expenses arising out of any default by the Developer in performing its obligations under this Agreement provided that RHP shall use all reasonable endeavours to mitigate any loss and shall not settle any claim without first obtaining the consent of the Guarantor.

44.6 In the event of the Guarantor being subject to an Insolvency Event, the Developer shall have a period of 20 Working Days to procure a replacement guarantor, acceptable to RHP, before RHP shall be able to exercise its rights under clause 36.1.1(a).

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

A person who is not a party to this Agreement contract does not have any rights to enforce it under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any rights which are available apart from that Act.

46 **Jurisdiction**

46.1 This Agreement and any dispute, claim or difference arising out of or in connection with it (whether contractual or non-contractual in nature) shall be governed by and construed in accordance with the laws of England and Wales.

46.2 Subject to any provision of this Agreement which expressly permits or requires some other means of dispute resolution to be used, the Courts of England and Wales shall have exclusive jurisdiction in relation to any matter, claim, dispute or difference arising out of or in connection with this Agreement (whether contractual or non-contractual in nature).

47 **Charities clause**

The Estate is currently held freehold by Richmond Housing Partnership Limited which is an exempt charity for the purposes of the Charities Act 2011.

48 **Value Added Tax**

48.1 In this clause 48, the following definitions shall apply:

HMRC means HM Revenue & Customs;

Order means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892);

Reverse Charge means, in relation to a supply, that under section 55A(6) of the Value Added Tax Act 1994 it is for the recipient, on the supplier's behalf, to account for and pay VAT on the supply and not for the supplier; and

Supply means a supply made for VAT purposes under or in connection with this Agreement in respect of the Works by the Developer and Supplies shall be construed accordingly.

48.2 The Parties agree and confirm that the procedure for the payment of VAT (if any) by either party to the other shall be governed entirely and exclusively by the provisions of this clause 48 notwithstanding any other provision of this Agreement.

48.3 Save as otherwise expressly stated in this Agreement, any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this Agreement is to be treated as exclusive of any VAT. If the person making the supply (or the representative member of the VAT group of which it is a member) is required to account for VAT on any supply, the recipient of the supply shall

pay (in addition to paying or providing any other consideration save where such consideration is expressed in this Agreement to be inclusive of VAT) an amount equal to the amount of that VAT upon the later of:

48.3.1 the time for payment or provision of the consideration; and

48.3.2 the receipt by the recipient of the supply of a valid VAT invoice in respect of that VAT.

48.4 RHP and RDL confirm that the requirements specified in article (8)(1)(b) of the Order will be satisfied in respect of any Supply and the parties consider that the Reverse Charge will not apply to the Supplies so that it is for Developer to account for and pay VAT to HMRC.

48.5 Where the Developer has accounted for VAT on Supplies (on the understanding that the Reverse Charge did not apply) but HMRC notifies RHP and/or RDL in writing that the Reverse Charge did apply in respect of those Supplies and, notwithstanding that Developer has accounted for VAT to HMRC in respect of those Supplies, RHP or RDL has to account for VAT under the Reverse Charge on those Supplies, the Developer shall, within two Working Days of receipt of a copy of such notice, issue a credit note to RHP or RDL as the case may be in respect of those Supplies and, promptly following recovery of the equivalent VAT from HMRC, pay to RHP or RDL as the case may be the amount of VAT included in such credit note.

48.6 The Developer warrants and undertakes to RHP that neither it nor any 'relevant associate' (to be construed in accordance with paragraph 3 of Schedule 10 to the VAT Act) of the Developer nor any 'relevant group member' (to be construed in accordance with paragraph 21(12) of Schedule 10 to the VAT Act) of the Developer has exercised or will exercise the option to tax or any real estate election in relation to the Property (or any part thereof).

49 **Costs**

On the date of this Agreement the Developer shall pay to RHP the sum of £100,000 in relation to their costs (exclusive of VAT) to date. For avoidance of doubt any sums paid under this clause are on account of and deductible from the Premium but such sum is not refundable in the event of Termination of this Agreement.

50 **Signage Requirements**

The Developer shall arrange at its own cost and at the request of RDL, for a sign and/or hoarding to be erected at the Property, the format and size to be agreed between the parties (acting reasonably) to confirm the involvement of RHP and the Council in the Development.

51 **Construction Industry Scheme**

51.1 In this clause 51:

Change of Status Notice means any notice from HMRC (served under Regulation 6(6) of the CIS Regulations) of a change in the status of the Developer;

CIS Regulations means the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) as amended by the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007 (SI 2007/672);

CIS Rules means the rules of the construction industry scheme as set out in Part 3, Chapter 3 and Schedule 11 of the FA 2004 and the CIS Regulations;

Construction Contract has the same meaning as in section 57(2) of the Finance Act 2004;

Contract Payment has the meaning given in Section 60 of the FA 2004;

FA 2004 means the Finance Act 2004;

HMRC means HM Revenue & Customs;

Payment means any payment to be made by RHP or RDL to the Developer under this Agreement; and

Verification means verification required to be made under Regulation 6(1) of the CIS Regulations.

51.2 Notwithstanding any other provisions in this Agreement, the Parties acknowledge that any Payment under this Agreement is a Contract Payment under a Construction Contract and RHP or RDL (as the case may be) will make any deduction from such payments as required by the CIS Rules.

51.3 RHP, RDL and the Developer shall each comply with the CIS Rules.

51.4 If RHP or RDL receives a Change of Status Notice then any Contract Payment made after the date specified in such notice shall be made in accordance with it (and this clause shall apply equally to any further Change of Status Notice(s) which may be received by RHP or RDL from time to time).

51.5 The Developer:

51.5.1 warrants to RHP and RDL that its unique taxpayer reference (UTR) is 1636820693 ;

51.5.2 warrants to RHP and RDL that it is registered for gross payment under Section 63(2) of the FA 2004;

51.5.3 undertakes to promptly provide to RHP and RDL any information reasonably requested by RHP or RDL to enable RHP or RDL to verify whether the Developer is registered for gross payment or payment under deduction for the purposes of the CIS Rules;

51.5.4 undertakes to promptly inform RHP and RDL in writing in the event that it is not or it ceases to be registered for gross payment for the purposes of the CIS Rules; and

51.5.5 undertakes to promptly provide to RHP and RDL any information reasonably requested by RHP or RDL to enable RHP or RDL to comply with their respective obligations under the CIS Rules including (without limitation) information to show how much of any payment represents the direct cost to the Developer or to any other person of materials used or to be used in carrying out the construction operations to which this Agreement relates.

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

Schedule 1

Planning

1 Planning

1.1 Protocol

The Developer shall comply with the 'Planning Protocol' at Appendix 9 Provided That to the extent the Planning Protocol includes a timetable which predates the date of this Agreement, RHP and the Developer shall agree a revised timetable as soon as practicable after the date hereof, both parties acting reasonably.

1.2 Developer's Planning Application

1.2.1 The Developer shall at its own expense within six calendar months after the date of this Agreement submit to RHP for its approval (such approval not to be unreasonably withheld or delayed) the proposed Planning Application.

1.2.2 RHP shall provide its comments to the proposed Planning Application within ten Working Days of receipt but if no comments are provided to the Developer by RHP within such period, then the Developer shall submit a further notice to RHP reminding it of its need to provide approval within a further five Working Days (time being of the essence), and if no such approval or response is provided within such period the proposed Planning Application shall be deemed approved.

1.2.3 The Developer shall pay due regard to RHP's comments on the proposed Planning Application but in the event of any dispute the provisions of clause 27 of this Agreement shall apply.

1.2.4 Once RHP have approved the Planning Application in accordance with this paragraph 1 and the Planning Protocol at Appendix 9, or the Planning Application has been approved in accordance with the dispute resolution procedure the Developer shall submit (within a further 20 Working Days) the Planning Application to the Local Planning Authority.

1.2.5 The Developer shall if requisite or desirable in order to obtain Planning Permission enter into discussion or negotiation with the Local Planning Authority including any Planning Performance Agreement required.

1.2.6 The Developer may in consequence of discussion or negotiation with the Local Planning Authority if requisite or desirable amend or withdraw the Planning Application and as soon as reasonably practicable after withdrawal of any Planning Application submit a new Planning Application, such new Planning Application being agreed with RHP in accordance with the terms of this paragraph 1.

1.3 Developer to keep RHP informed

In conducting discussion or negotiation with the Local Planning Authority the Developer shall:

- 1.3.1 keep RHP informed of the progress of the Planning Application and any Proceedings;
- 1.3.2 allow RHP to attend meetings with the Local Planning Authority and to participate at them; and
- 1.3.3 not agree any material changes to the Planning Application without the consent of RHP such consent not to be unreasonably withheld or delayed.

1.4 Co-operation of RHP

- 1.4.1 RHP shall co-operate with the Developer and use reasonable endeavours to assist the Developer to discharge the Planning Condition, but in so doing RHP may not act independently of the Developer. Without prejudice to the generality of this paragraph 1.4 RHP shall on reasonable prior written notice afford the Developer and any Relevant Authority all necessary rights of access to the Estate and where necessary shall enter into any Planning Performance Agreement required by the Local Planning Authority and/or the Developer required to progress the preparation of the Planning Application.
- 1.4.2 Without prejudice to the generality of this paragraph ~~1.4.1~~1.4 RHP will, if it is necessary to do so to procure the grant of a Satisfactory Planning Permission, at the request and cost of the Developer enter into any Planning Agreement that has been negotiated by the Developer **provided that**:
 - (a) it must be stipulated in the Planning Agreement that any planning obligations are to become operative only if the development to which they relate is begun, and that RHP is in any event to be relieved from all liability for them after it has parted with all interest in the Property; and
 - (b) the Developer agrees to indemnify RHP against such liability as may arise under or in respect of the provisions of the Planning Agreement (save in respect of any provisions relating to the occupation of affordable housing units under the Planning Agreement).
- 1.4.3 Without prejudice to the generality of this paragraph RHP shall not make any applications to the Local Planning Authority:
 - (a) to submit any planning applications in respect of the Estate;
 - (b) to vary or otherwise amend any existing planning permissions, planning applications or planning agreements in respect of the Estate; and
 - (c) to vary or otherwise amend the Planning Application.
- 1.4.4 RHP shall not make any objections to the Planning Application or any subsequent application for approval of reserved matters under any Planning Permission.

2 **CIL**

2.1 RHP and the Developer shall each take such action as is necessary to enable compliance with the CIL Regulations.

2.2 Without prejudice to the generality of the foregoing, RHP shall not assume liability for CIL in respect of the Chargeable Development under Regulation 31 of the CIL Regulations.

2.3 RHP shall not Commence the Development.

2.4 The Developer shall indemnify RHP in respect of any CIL due in respect of the Development but RHP shall co-operate and use reasonable endeavours to assist the Developer to achieve any available reliefs.

3 **Planning Decision Notification**

3.1 The Developer shall supply a copy of a Decision Notice to RHP within 15 Working Days after the date upon which it is received by the Developer together with a copy of any related Planning Agreement.

3.2 When submitting the Decision Notice and Planning Agreement to RHP pursuant to paragraph 3.1, the Developer shall provide a schedule of accommodation which shall include details of the plots, tenure and area.

4 **Satisfactory Planning Permission**

4.1 Within 20 Working Days of receipt of a Planning Permission the Developer shall notify RHP in writing whether or not the Planning Permission (and any related Planning Agreement) is a Satisfactory Planning Permission and if not stating its reasons why not. The Developer may only state that the Planning Permission (and any related Planning Agreement) is not a Satisfactory Planning Permission because of the presence of any Onerous Conditions.

4.2 Within 20 Working Days of receipt of a copy of a Planning Permission (and any related Planning Agreement) from the Developer RHP shall respond in writing to the Developer:

4.2.1 if the Developer has notified RHP that it considers that the Planning Permission (and any related Planning Agreement) is a Satisfactory Planning Permission RHP shall notify the Developer in writing either:

(a) that it agrees that the Planning Permission (and any related Planning Agreement) is a Satisfactory Planning Permission in which case the Planning Permission (and any related Planning Agreement) shall be treated as a Satisfactory Planning Permission; or

(b) that it disagrees that the Planning Permission (and any related Planning Agreement) is a Satisfactory Planning Permission in which case RHP shall set out its reasons why it considers the Planning Permission (and any related Planning Agreement) is not a Satisfactory Planning Permission,

and in the event there is a dispute between the parties, then the provisions of paragraph 4.3 shall apply.

4.2.2 if the Developer has notified RHP that it considers that the Planning Permission (and any related Planning Agreement) is not a Satisfactory Planning Permission RHP shall notify the Developer in writing either:

- (a) that it agrees that the Planning Permission (and any related Planning Agreement) is not a Satisfactory Planning Permission in which case the parties shall discuss what reasonable actions are required to secure a Satisfactory Planning Permission and the Developer shall carry out such actions which it reasonably considers necessary to secure a Satisfactory Planning Permission within such timescale as the parties shall agree; or
- (b) that it disagrees that the Planning Permission is not a Satisfactory Planning Permission in which case RHP shall set out its reasons why it considers the Planning Permission is a Satisfactory Planning Permission,

and in the event there is a dispute between the parties, then the provisions of paragraph 4.3 shall apply.

4.3 Any dispute between the parties as to whether a Planning Permission (and any related Planning Agreement) is a Satisfactory Planning Permission shall at the instigation of either party be referred to an expert in accordance with clause ~~27~~28.

5 Appeal against Planning Refusal

5.1 In the event of a Planning Refusal the Developer shall at its own expense seek the opinion of Counsel as to the prospects of success of an Appeal and where Counsel is of the opinion that there is a greater than 60 per cent chance of the Appeal resulting in the grant of a Satisfactory Planning Permission then RHP and the Developer will discuss the likely timing of running the Appeal relative to the Construction Commencement Date of Phase 1 both parties acting reasonably.

5.2 In the event that the parties are of the view that there is insufficient time to run an Appeal to a successful conclusion then RHP shall use reasonable endeavours to negotiate with the Greater London Authority to agree an extension of their site commencement requirements so as to allow the Construction Commencement Date for Phase 1 to be commensurately extended with the period of such extension to be approved by both RHP and the Developer.

5.3 Where an extension pursuant to clause 5.2 is obtained and agreed the Developer will prosecute the Appeal with all due diligence and will conduct its part in the Appeal proceedings in a good and efficient manner.

5.4 In prosecuting the Appeal the Developer will:

- 5.4.1 keep RHP informed about the progress of the Appeal; and
- 5.4.2 allow RHP to attend at conferences with Counsel and other relevant meetings.

5.5 Notwithstanding any other provisions of this clause 5 the Developer is entitled in its absolute discretion to lodge and Appeal at any time irrespective of the chances of its success.

6 **Grant of Planning Permission**

6.1 Subject to the provisions of paragraph 6.2 below, the Planning Condition will be discharged on the last to occur of:

6.1.1 the date on which the Developer and RHP (both acting reasonably) agree that the grant of a Planning Permission (and any related Planning Agreement) by the Local Planning Authority or by the Mayor or by the Secretary of State is a Satisfactory Planning Permission pursuant to paragraph 4 of this Schedule or in the case of disagreement the Independent Person has determined that the Planning Permission (and any related Planning Agreement) is a Satisfactory Planning Permission; and

6.1.2 the date of completion of a Planning Agreement, if required by the Planning Permission and entered into after the date of grant of the Planning Permission **provided that** such Planning Agreement shall be subject to the notification and approval process set out at paragraph 4 of this Schedule and the Planning Permission shall not be a Satisfactory Planning Permission unless the process set out at paragraph 4 has resulted in agreement that the Planning Agreement contains no Onerous Condition or an Independent Person appointed pursuant to clause 27 has determined that the Planning Agreement does not contain any Onerous Condition.

6.2 Notwithstanding the grant of Satisfactory Planning Permission and completion of a Planning Agreement (if appropriate), the Planning Condition shall not be treated as discharged until one of the following events has occurred:

6.2.1 (in the case of a grant by the Secretary of State) a period of six weeks has expired without any Proceedings;

6.2.2 (in any other case) the period of six weeks and ten days has expired since the grant of the Satisfactory Planning Permission without any Proceedings; or

6.2.3 all Proceedings have been withdrawn,

and in any such case the application has been finally disposed of leaving in place the Satisfactory Planning Permission and the Planning Agreement (if appropriate) in a form which discharges the Planning Condition.

7 **Mutual co-operation**

Neither the Developer nor RHP shall knowingly do any act or thing in any way prejudice the Planning Application or any Appeal.

Schedule 2

Overage

1 The following definitions apply in this Schedule:

Base Developer Return means 22.5%;

Authorised Disposal means:

- (a) in respect of a leasehold Private Unit, that it has been sold (by the Developer) by way of the grant of a Residential Underlease; or
- (b) in respect of a freehold Private Unit, that it has been transferred by the Developer (or by RHP at the Developer's direction) by means of a Housing Unit Transfer in accordance with this Agreement;
- (c) mortgage or charge of the Property or any part of it to a Funder;
- (d) the granting of a licence or tenancy in respect of the Property or any part of it on terms which (under the law prevailing at the time) would entitle the owner of the Property without obtaining any Court Order and without taking any steps save for the service of a notice on the occupant to obtain occupation of the Property with vacant possession not later than 60 months from the date of such grant;
- (e) a disposition of a part of the Property to a local authority or statutory body pursuant to a Planning Agreement;
- (f) a disposition of part of the Property to a statutory body or service supply company in respect of electricity substations, gas governors or water pumping stations or other statutory services which have been or are to be constructed or installed in or upon the Property;
- (g) a disposition to any part of the Property to a highway authority for the purposes of adoption of the roads and footpaths and cycleways (if any) to be constructed on the Property;
- (h) a disposition to a management company for the purposes of managing any common parts and facilities on the Property provided that the disposition restricts the use to such a purpose;

and the expression **Disposal** and **Disposition** shall be construed accordingly

Disposal Value the gross proceeds (excluding any VAT) received or receivable from the donee of, or attributable to, a Disposal including (but not limited to) the value of any money or money's worth, deferred consideration or any part exchange property (being any property received or receivable as the whole or part of the consideration for the relevant Private Unit);

Deemed Disposal Value

means:

- (a) where a reservation agreement or an agreement for sale and purchase has been exchanged in respect of the relevant Unsold Unit the agreed purchase price as stated in such agreement (less any Sales Incentives or Purchaser's Extras); and
- (b) where no reservation agreement or an agreement for sale and purchase has been exchanged in respect of the relevant Unsold Unit the Residential Market Value of such Unsold Unit (less a reasonable estimate of any Sales Incentives which may be applicable to such Unsold Unit)

Net Private Revenue

means the aggregate of :

- (a) the Disposal Values of all the Disposals completed on or before the Trigger Date; and
- (b) and the Deemed Disposal Values of all the Unsold Units;

Notional Costs

means:

- (a) any Total Development Costs which the Developer has not incurred by the Trigger Date but which it would be necessary for the Developer to incur in order to complete the Development and dispose of the Private Units; and
- (b) any Total Development Costs incurred by the Developer by the Trigger Date but the final amount of those Total Development Costs has not been ascertained;

provided that there shall be no double-counting so that no item shall be included within Notional Costs more than once;

Extras Purchaser's

means any items or enhancements that are not included within the standard specification for the Private Units including (but not limited to) curtains, carpets, white goods, furniture or landscaping and for which a purchaser makes an additional payment;

Private Unit

means any Dwelling on the Development excluding any Affordable Housing Units and excluding any other units disposed of to RHP in order to comply with any obligations as to the delivery of affordable housing within a Satisfactory Planning Permission;

Residential Market Value

means the open market value at the Trigger Date of a Private Unit (where the relevant lease or transfer (as the case may be) is in substantially the same form (mutatis mutandis) as the forms of lease or transfer used for equivalent Private Units) on a Disposal between a willing buyer and a willing seller in a bona fide arm's length transaction after proper marketing and where the parties had each acted knowledgeably, promptly and without compulsion, ascertained in accordance with the Royal Institution of Chartered Surveyors Appraisal and Valuation Manual Practice and Guidance Notes current as at the Trigger Date;

Residential Underlease

means an underlease of a Dwelling for a term of more than 7 years ;

Sales Incentives

means any inducement or incentive provided/paid to induce a purchaser to enter into a purchase of Private Unit including:

- (a) Furniture and fittings (including increased cost due to specification upgrade) at cost;
- (b) Carpets at cost;
- (c) Curtains / blinds at cost;
- (d) Cash hand-back;
- (e) Payment of a non-Returnable deposit;
- (f) Mortgage subsidy;
- (g) Purchasers legal costs at cost;
- (h) Purchasers survey/valuation cost;
- (i) SDLT refund;
- (j) Removal costs;
- (k) Overpayment above market value of a part exchanged property;
- (l) Irrecoverable VAT from the Sales Incentives;

and here the calculation is being undertaken as at the Trigger Date, a reasonable estimate of any Sales Incentives shall be applied to any Unsold Units and in any such case and for the purposes of calculating the Sales Overage Payment shall not exceed 5%% of the Disposal Value;

**Sales Overage
Payment**

means the amount an overage to be paid by the Developer to RHP and calculated in accordance with paragraph 2 of this Schedule;

**Total
Development Costs**

means all costs reasonably and properly incurred by the Developer in connection with the Development including (but not limited to) the Premium (including any SDLT payable thereon), build and construction costs, costs of obtaining a Satisfactory Planning Permission, consultants fees costs of sales and marketing, costs of funding (including interest thereon) and Notional Costs (provided that there shall be no double-counting so that no item shall be included within Total Development Costs more than once);

Total Revenue

means all revenue received by the Developer in respect of the Development (including for the avoidance of doubt the Affordable Housing Package Price);

Trigger Date	means the earlier of:
	(a) 48 months from the date of grant of the Building Lease for Phase 3; and
	(b) the date on which the final Private Unit on Phase 3 is Disposed of;
Unsold Unit	means a Private Unit which has not been Disposed of on or prior to the Trigger Date.

2 Sales Overage Payment

2.1 On the Trigger Date the Sales Overage Payment shall be calculated in accordance with the following formula:

$$(A - B) - (C \times D) = E$$

$$E \times 50\% = \text{Sales Overage Payment}$$

where:

- "A" represents the Total Revenue (expressed in £);
- "B" represents the Total Development Costs (expressed in £);
- "C" represents the Net Private Revenue (expressed in £); and
- "D" represents the Base Developer Return (expressed as a percentage).

2.2 In the interests of clarity the parties have attached a worked example at Appendix 5 to demonstrate the intended operation of the above formula but in the event of there being any conflict between such worked example and the provisions of this paragraph 2 (and the associated definitions) this paragraph 2 shall prevail.

2.3 Within 20 Working Days of the Trigger Date the Developer shall provide RHP with its calculation of the Sales Overage Payment (the **Developer's Statement**).

2.4 If reasonably requested, the Developer shall provide or make available to RHP full details and sufficient evidence (in each case satisfactory to RHP, acting reasonably) of all of the components of the calculation of the Sales Overage Payment referred to on the Developer's Statement (including the disclosure of the Total Development Costs on an open book basis).

2.5 RHP shall, acting in good faith, confirm within 20 Working Days of provision of the Developer's Statement and receipt of any additional evidence supplied in accordance with paragraph 2.4 whether RHP approves the same.

2.6 The Developer shall pay the Sales Overage Payment (calculated in accordance with the Developer's Statement) to RHP within 10 Working Days of the relevant Sales Overage Payment being agreed or determined.

2.7 The Developer and RHP:

2.7.1 agree to act in good faith in relation to their obligations in this Schedule; and

2.7.2 shall not take any act or action where the principal purpose or effect is to avoid or reduce the size of the payment to be made pursuant to this paragraph 2;

2.8 Any dispute in relation to the matters referred to in this paragraph 2 shall at the instigation of either party be referred to an expert in accordance with clause 2728 of this Agreement.

3 **Restriction on Disposals — Sales Overage**

3.1 Prior to payment of the Sales Overage Payment, the Developer shall not Dispose of the Property or any part thereof (other than by way of an Authorised Disposal) unless the Donee has executed a Deed of Covenant and delivered it to RHP

3.2 The parties hereto shall promptly apply to the Land Registrar to enter a restriction in the following form on the Proprietorship Register of each Building Lease (with such changes, if any, as the Land Registrar shall require or suggest);

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of a registered charge, not being a charge registered before the registration of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of paragraph [3.1 of Schedule 2] of an Agreement dated [] 2021 and made between (1) Richmond Housing Partnership Limited and (2) RHP Develop Limited (3) Hill Residential Limited and (4) Hill Holdings Limited have been complied with or that they do not apply to the disposition".

4 **Interest**

Where the Developer fails to pay to RHP any sums due and payable under this Schedule on the due date the Developer shall pay to RHP interest on that sum at a default rate of 4% above the Bank of England Base Rate from time to time in force from the due date of payment until actual payment.

Schedule 3

Payment procedure in relation to RDL Works and Community Facility Works

1 General provisions

References in this Schedule 3 to a paragraph are references to such paragraph in this schedule or the Agreement (as the context requires).

2 Payment

- 2.1 The Developer shall make an Application for Payment on the 28th day (or the nearest Working Day) of each calendar month following the commencement of the RDL Works or in the case of the Community Facility Works, the Developer shall make an Application for Payment on the 28th day (or the nearest Working Day) of each calendar month following the CF Payment Trigger Date.
- 2.2 The due date of payment of any monies payable to the Developer pursuant to this Agreement shall be the date of receipt by RDL's Representative of the Developer's Application for Payment submitted in accordance with paragraph 2.1 (the **Due Date**).
- 2.3 Within five days of the Due Date RDL's Representative shall give notice of the sum it considers to have been due on the Due Date and the basis on which that sum is calculated (the **Payment Notice**).
- 2.4 If RDL's Representative does not issue a Payment Notice in accordance with paragraph 2.3 then the Developer's Application for Payment under paragraph 2.1 shall be treated as the Payment Notice.
- 2.5 The final date for payment of any sum payable pursuant to this Agreement shall be 21 days after the later of:
- 2.5.1 the Due Date; and
 - 2.5.2 receipt of a valid tax invoice addressed to RHP and for the attention of RDL's Representative in the amount stated in the Payment Notice,
- (the **Final Date for Payment**).
- 2.6 RDL shall be entitled to pay less than the amount stated in the Payment Notice and RDL's Representative shall issue a notice specifying the sum it considers to be due on the date the notice is served and the basis on which that sum is calculated (the **Pay Less Notice**). The Pay Less Notice shall be served on the Developer no later than five days before the Final Date for Payment.
- 2.7 Subject to paragraph 2.6, RDL shall pay the Developer the amount stated in the Payment Notice by the Final Date for Payment. Where a Pay Less Notice is given, the payment to be made on or before the Final Date for Payment shall be not less than the amount stated in it as due.
- 2.8 In the event that the Developer becomes insolvent (as set out in section 113(2), 113(3), 113(4) or 113(5) of the Housing Grants Construction and Regeneration Act 1996 (as

amended)) RDL shall not be obliged to pay any sum that has become due to the Developer insofar as RDL's Representative has issued or shall issue a Pay Less Notice in accordance with paragraph 2.6 or if the Developer becomes insolvent after the date on which the Pay Less Notice in relation to that sum could have been issued in accordance with paragraph 2.6.

2.9 Notwithstanding any other provision of this Agreement RDL's Representative may in any subsequent payment to the Developer delete, correct and/or modify any sum or sums previously paid by RDL to the Developer.

2.10 In the event that sums due to be paid by RDL under this Agreement are not paid on or before the relevant Final Date for Payment, RDL will pay interest at the Contract Rate for the time being on so much of the amount due as outstanding from the Final Date for Payment until the payment is received by the Developer in cleared funds.

2.11 RDL may retain the Retention from payments made under this Schedule 3 in respect of the RDL Works which shall be released to the Developer within seven days of the issue of the certificate of making good defects in accordance with clause ~~17.8~~18.6.

Executed as a deed by affixing the Common)
Seal of **RICHMOND HOUSING PARTNERSHIP**)
in the presence of:)

Common Seal

.....

.....

Authorised Signatory

.....

.....

Authorised Signatory

Executed as a deed by RHP DEVELOP)
LIMITED)
acting by:)

.....

Director

.....

Director/Company Secretary

Executed as a deed by HILL RESIDENTIAL)
LIMITED)
acting by:)

.....

Director

.....

Director/Company Secretary

Executed as a deed by HILL HOLDINGS)
LIMITED)
acting by:)

.....

Director

.....

Director/Company Secretary

Appendix 1

Estate Plan

Appendix 2A
RDL Works Specification

Appendix 2B
Developer Works Specification

Appendix 2C
Community Facility Specification

Appendix 3
Deed of Adherence

Building Contract means the JCT Design and Build Contract (2011 edition) as amended dated [] entered into between the Employer and the Contractor (and any further agreement(s) varying or supplementing it) for the Works;

Contractor's Design Documents means the drawings, details and specifications of materials, goods and workmanship and other related documents prepared by or for the Contractor in relation to the design of the Works;

[Employer means [] (company number []) of/whose registered office is at [];]

Group Company means any subsidiary company or holding company of the Beneficiary or another subsidiary or holding company of such company as subsidiary and holding company are defined in section 1159 Companies Act 2006;

Project means [] at the Property;

Property means [];

Working Day means any day except Saturday Sunday and bank or other public holidays in England; and

Works means the works of design, demolition, refurbishment, construction, completion and defects rectification to be carried out on the Property pursuant to the Building Contract.

1.2 The clause headings in this warranty are for convenience only and do not affect its interpretation.

1.3 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.

1.4 Words of one gender include both genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.

1.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

1.6 References in this warranty to numbered clauses are references to the relevant clause in this warranty.

2 **Consideration**

In consideration of the payment of £10 by the Beneficiary to the Contractor (receipt of which the Contractor hereby acknowledges) the Contractor covenants to the Beneficiary as set out in this warranty.

3 **Duty of care**

The Contractor warrants and undertakes to the Beneficiary that:

3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Building Contract;

3.2 in relation to the design of the Works the Contractor shall have in respect of any deficiency or insufficiency in such design the like liability to the Beneficiary, whether under statute or otherwise, as would a design and build contractor experienced in carrying out such works for projects of a similar size scope value character and complexity to the Works;

3.3 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Contractor's responsibilities in relation to the Project provided that the Contractor shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named as client instead of the Employer in the Building Contract; and

3.4 the Beneficiary shall be deemed to have relied and shall continue to rely upon the Contractor's skill and judgement in respect of all matters which lie within the scope of the Contractor's responsibilities in relation to the Project.

4 **Prohibited materials**

The Contractor shall not specify or authorise for use any materials or goods which are then known (or generally considered within the construction industry) to be deleterious to health and safety or to durability in the particular circumstances in which they are used.

5 **[Step-in**

5.1 The Contractor covenants with the Beneficiary that if any event of default shall occur under the Agreement at any time the Contractor shall, if so required by notice in writing given by the Beneficiary in accordance with clauses 5.4.1 to 5.4.3 inclusive, accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer upon the terms and conditions of the Building Contract and the Employer acknowledges that the Contractor shall be entitled to rely on the notice given to the Contractor by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.

5.2 The Contractor hereby covenants that it shall not exercise nor seek to exercise any right to terminate or treat as terminated the Building Contract and/or its employment or discontinue or suspend the performance of any of its obligations under the Building Contract without first giving to the Beneficiary prior written notice specifying the Contractor's ground for terminating or treating as terminated the Building Contract and/or its employment and/or discontinuing or suspending its performance under the Building Contract. If the grounds are that sums which are due have not been paid by the final payment date and no effective pay less notice has been given the Contractor shall give seven days' notice otherwise the Contractor shall give 15 Working Days' notice.

5.3 Compliance by the Contractor with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Contractor from exercising its rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provision of clause 5.4.

5.4 Within the relevant notice period referred to in clause 5.2 the Beneficiary or its appointee may give written notice to the Contractor:

- 5.4.1 acknowledging that it assumes all the obligations of the Employer;
- 5.4.2 requiring the Contractor to continue with the performance of its duties and obligations under the Building Contract;
- 5.4.3 undertaking unconditionally to the Contractor to pay to the Contractor within 15 Working Days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Contractor under the Building Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Contractor from the appointee[;][.]

[provided that the rights of [] under clause 5 of the warranty given or to be given by the Contractor to [] shall have priority over the rights of the Beneficiary under this clause whether such are exercised by [] before or after the exercise by the Beneficiary of its rights under this clause.]

- 5.5 In the event of the Beneficiary or their appointee giving notice to the Contractor in accordance with clause 5.4 the Building Contract shall continue in full force and effect and in all respects as if the Building Contract had been made between the Contractor and the Beneficiary or its appointee (as applicable) to the exclusion of the Employer (but without prejudice to any rights of recovery as between the Contractor and the Employer) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.
- 5.6 The Employer confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.]

6 Copyright

- 6.1 Subject to any rights in any design, drawings and other documents supplied to the Contractor for the purposes of the Building Contract by or on behalf of the Employer, the copyright in all the Contractor's Design Documents shall remain vested in the Contractor.
- 6.2 The Beneficiary shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. Such licence shall enable the Beneficiary to copy and use the Contractor's Design Documents for the extension of the Works but shall not include a licence to reproduce the designs contained in them for any extension of the Works.
- 6.3 The Contractor shall not be liable for any use by the Beneficiary of any of the Contractor's Design Documents for any purpose other than that for which they were prepared.
- 6.4 When requested to do so by the Beneficiary the Contractor shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Contractor's reasonable copying charges in connection with complying with such request.

7 **Insurance**

7.1 The Contractor shall:

7.1.1 take out (unless the Contractor has already done so) a professional indemnity insurance policy for not less than £[] [for each and every claim] [for each occurrence of series of occurrences arising out of each and every event] [in the aggregate for each year of insurance] [provided that such limit of indemnity may be [in the aggregate for each year of insurance] [£ []] in respect of claims for pollution contamination and date recognition];

7.1.2 provided that it remains available at commercially reasonable rates, maintain such insurance until the expiry of 12 years from the date of practical completion of the Works; and

7.1.3 as and when reasonably requested to do so by the Beneficiary, produce for inspection documentary evidence that such has been effected and/or is being maintained.

7.2 If the insurance referred to in clause 14.1 ceases to be available at commercially reasonable rates, the Contractor shall immediately give notice to the Beneficiary so that the Contractor and the Beneficiary can discuss the means of best protecting the respective positions of the Beneficiary and the Contractor in the absence of such insurance.

8 **Assignment**

8.1 The Contractor shall not without the consent of the Beneficiary assign its rights under this warranty.

8.2 The Beneficiary may (without the consent of the Contractor [and the Employer]) assign its rights under this warranty:

8.2.1 to any mortgagee and by way of re-assignment on redemption; and/or

8.2.2 to any Group Company; and/or

8.2.3 on two other occasions only.

8.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 16.2.3.

8.4 The Contractor undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

9 **Delay**

The Contractor shall not be liable to the Beneficiary in respect of any delay to the completion of the Works [unless and until the Beneficiary has given notice to the Contractor under clause 5.4].

10 **Notices**

10.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered office for the time being.

10.2 Notices shall be delivered by:

10.2.1 hand delivery;

10.2.2 pre-paid registered or recorded delivery mail; or

10.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.

10.3 Notices and communications shall be deemed to have been delivered or received in the case of:

10.3.1 hand delivery on the date of delivery;

10.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted; or

10.3.3 facsimile transmission sent in accordance with clause 10.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

11 **Continuing effect**

Notwithstanding the completion of the Project or any part of the Project this warranty shall continue to have effect.

12 **Miscellaneous**

12.1 Nothing in this warranty shall limit or affect any other rights or remedies (whether under any contract, at law, at equity or otherwise) which the Beneficiary would have against the Contractor in the absence of this warranty.

12.2 The Contractor's liability under this warranty shall not be released, diminished or in any other way affected by:

12.2.1 the appointment by the Beneficiary of any person to monitor the carrying out of the Works or to inspect any documents relating to the Property and/or the Works on behalf of the Beneficiary or the failure to appoint such a person; or

12.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.

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

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

14 **Law**

This warranty shall and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

This warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

Form of design sub-contractor warranty (includes consultants novated to or engaged directly by the Contractor)

Part II

Design Sub-Contractor warranty

dated []

Parties

- (1) [] (registration number []) [of] [whose registered office is at] [] (the **Design Sub-Contractor**);
- (2) [] (registration number []) [of] [whose registered office is at] [] (the **Beneficiary**); and
- (3) [[] (registration number []) [of] [whose registered office is at] [] (the **Contractor**).]

Introduction

- (A) The [Employer] [Beneficiary] has procured the carrying out of the Works at the Property (as defined below).
- (B) The Contractor carries on business as a building contractor and has been appointed as such by the [Employer] [Beneficiary] to carry out the Works upon the terms and conditions contained in the Building Contract (as defined below).
- (C) The Contractor has engaged the Design Sub-Contractor in the capacity of [].
- (D) The Beneficiary has an interest/will have an interest in the Property or a part or parts of the Property and/or the Project and has entered into the Agreement (as defined below) in respect of the Property/is the Employer under the Building Contract.
- (E) The Design Sub-Contractor has agreed to enter into this warranty in favour of the Beneficiary.

Agreed terms

1 Definitions and interpretation

- 1.1 In this warranty the following terms have the following meanings unless inconsistent with the context:

[Agreement] means the agreement between the Beneficiary and the Employer dated [] whereby the Beneficiary has agreed to [provide finance for the carrying out and completion of the Project] [purchase the Property] [acquire a long leasehold interest in the Property] [engaged the Employer as developer to procure the carrying out of the Works;]

Building Contract means the JCT Design and Build Contract (2011 edition) as amended dated [] entered into between the [Employer] [Beneficiary] and the Contractor (and any further agreement(s) varying or supplementing it) for the Works;

[Contractor] means [] (company number []) of/whose registered office is at [];

Design Sub-Contract means the terms of engagement entered into between the Contractor and the Design Sub-Contractor [by way of a deed of novation] dated [] (and any further agreement(s) varying or supplementing it) under which the Design Sub-Contractor has agreed to provide the Services;

Documents means the drawings, details and specifications of materials, goods and workmanship and other related documents prepared by or for the Design Sub-Contractor in relation to the design of the Works;

[Employer means [] (company number []) of/whose registered office is at [];]

Group Company means any subsidiary company or holding company of the Beneficiary or another subsidiary or holding company of such company as subsidiary and holding company are defined in section 1159 Companies Act 2006;

Project means [] at the Property;

Property means [];

Services means the works, design and/or services which the Design Sub-Contractor has been retained to carry out under the Design Sub-Contract;

Working Day means any day except Saturday Sunday and bank or other public holidays in England; and

Works means the works of design, [demolition, refurbishment,] construction, completion and defects rectification to be carried out on the Property pursuant to the Building Contract.

1.2 The clause headings in this warranty are for convenience only and do not affect its interpretation.

1.3 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.

1.4 Words of one gender include both genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.

1.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

1.6 References in this warranty to numbered clauses are references to the relevant clause in this warranty.

2 **Consideration**

In consideration of the payment of £10 by the Beneficiary to the Contractor (receipt of which the Contractor hereby acknowledges) the Contractor covenants to the Beneficiary as set out in this warranty.

3 **Duty of care**

The Design Sub-Contractor warrants and undertakes to the Beneficiary that:

- 3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Design Sub-Contract;
- 3.2 it has exercised and will continue to exercise in the performance of the Services all the reasonable skill and care to be expected of a properly qualified and competent [] experienced in the provision of services and works for projects of a similar size scope value character and complexity to the Project;
- 3.3 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Design Sub-Contractor's responsibilities in relation to the Project provided that the Design Sub-Contractor shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named as client instead of the Contractor in the Design Sub-Contract; and
- 3.4 the Beneficiary shall be deemed to have relied and shall continue to rely upon the Design Sub-Contractor's skill and judgement in respect of all matters which lie within the scope of the Design Sub-Contractor's responsibilities in relation to the Project.

4 **Prohibited materials**

The Design Sub-Contractor shall not specify or authorise for use any materials or goods which are then known (or generally considered within the construction industry) to be deleterious to health and safety or to durability in the particular circumstances in which they are used.

5 **[Step-in**

- 5.1 [The Design Sub-Contractor covenants with the Beneficiary that if any event of default shall occur under the Building Contract at any time the Design Sub-Contractor shall, if so required by notice in writing given by the Beneficiary in accordance with clauses 5.4.1 to 5.4.3 inclusive, accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor upon the terms and conditions of the Design Sub-Contract and the Contractor acknowledges that the Design Sub-Contractor shall be entitled to rely on the notice given to the Design Sub-Contractor by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.]
- 5.2 The Design Sub-Contractor hereby covenants that it shall not exercise nor seek to exercise any right to terminate or treat as terminated the Design Sub-Contract and/or its employment or discontinue or suspend the performance of any of its obligations under the Design Sub-Contract without first giving to the Beneficiary prior written notice specifying the Design Sub-Contractor's ground for terminating or treating as terminated the Design Sub-Contract and/or its employment and/or discontinuing or suspending its performance under the Design Sub-Contract. If the grounds are that sums which are due have not been paid by the final payment date and no effective pay less notice has been given the Design Sub-Contractor shall give seven days' notice otherwise the Design Sub-Contractor shall give 15 Working Days' notice.

5.3 Compliance by the Design Sub-Contractor with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Design Sub-Contractor from exercising its rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provision of clause 5.4.

5.4 Within the relevant notice period referred to in clause 5.2 the Beneficiary or its appointee may give written notice to the Design Sub-Contractor:

5.4.1 acknowledging that it assumes all the obligations of the Contractor;

5.4.2 requiring the Design Sub-Contractor to continue with the performance of its duties and obligations under the Design Sub-Contract; and

5.4.3 undertaking unconditionally to the Design Sub-Contractor to pay to the Design Sub-Contractor within 15 Working Days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Design Sub-Contractor under the Design Sub-Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Design Sub-Contractor from the appointee[:][.]

[provided that the rights of [] under clause 5 of the warranty given or to be given by the Design Sub-Contractor to [] shall have priority over the rights of the Beneficiary under this clause whether such are exercised by [] before or after the exercise by the Beneficiary of its rights under this clause.]

5.5 In the event of the Beneficiary or their appointee giving notice to the Design Sub-Contractor in accordance with clause 5.4 the Design Sub-Contract shall continue in full force and effect and in all respects as if the Design Sub-Contract had been made between the Design Sub-Contractor and the Beneficiary or its appointee (as applicable) to the exclusion of the Contractor (but without prejudice to any rights of recovery as between the Design Sub-Contractor and the Contractor) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.

5.6 The Contractor confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.]

6 Copyright

6.1 Subject to any rights in any design, drawings and other documents supplied to the Design Sub-Contractor for the purposes of the Design Sub-Contract by or on behalf of the Contractor, the copyright in all the Documents shall remain vested in the Design Sub-Contractor.

6.2 The Beneficiary shall have an irrevocable, royalty-free, nonexclusive licence to copy and use the Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. Such licence shall enable the Beneficiary to copy and use the

Documents for the extension of the Works but shall not include a licence to reproduce the designs contained in them for any extension of the Works.

6.3 The Design Sub-Contractor shall not be liable for any use by the Beneficiary of any of the Documents for any purpose other than that for which they were prepared.

6.4 When requested to do so by the Beneficiary the Design Sub-Contractor shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Design Sub-Contractor's reasonable copying charges in connection with complying with such request.

7 Insurance

7.1 The Design Sub-Contractor shall:

7.1.1 take out (unless the Design Sub-Contractor has already done so) a professional indemnity insurance policy for not less than £[] [for each and every claim] [for each occurrence of series of occurrences arising out of each and every event] [provided that such limit of indemnity may be [in the aggregate for each year of insurance] £[]] in respect of claims for pollution contamination and date recognition];

7.1.2 provided that it remains available at commercially reasonable rates, maintain such insurance until the expiry of [six] [12] years from the date of practical completion of the Works; and

7.1.3 as and when reasonably requested to do so by the Beneficiary, produce for inspection documentary evidence that such has been effected and/or is being maintained.

7.2 If the insurance referred to in clause 7.1 ceases to be available at commercially reasonable rates, the Design Sub-Contractor shall immediately give notice to the Beneficiary so that the Design Sub-Contractor and the Beneficiary can discuss the means of best protecting the respective positions of the Beneficiary and the Design Sub-Contractor in the absence of such insurance.

8 Assignment

8.1 The Design Sub-Contractor shall not without the consent of the Beneficiary assign its rights under this warranty.

8.2 The Beneficiary may (without the consent of the Design Sub-Contractor and the Contractor) assign its rights under this warranty:

8.2.1 to any mortgagee and by way of re-assignment on redemption; and/or

8.2.2 to any Group Company; and/or

8.2.3 on two other occasions only.

8.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 8.2.3.

8.4 The Design Sub-Contractor undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

9 Notices

9.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered office for the time being.

9.2 Notices shall be delivered by:

9.2.1 hand delivery;

9.2.2 pre-paid registered or recorded delivery mail; or

9.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.

9.3 Notices and communications shall be deemed to have been delivered or received in the case of:

9.3.1 hand delivery on the date of delivery;

9.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted; or

9.3.3 facsimile transmission sent in accordance with clause 9.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

10 Continuing effect

Notwithstanding the completion of the Project or any part of the Project this warranty shall continue to have effect.

11 Miscellaneous

11.1 Nothing in this warranty shall limit or affect any other rights or remedies (whether under any contract, at law, at equity or otherwise) which the Beneficiary would have against the Design Sub-Contractor in the absence of this warranty.

11.2 The Design Sub-Contractor's liability under this warranty shall not be released, diminished or in any other way affected by:

11.2.1 the appointment by the Beneficiary of any person to monitor the carrying out of the Works or to inspect any documents relating to the Property and/or the Works on behalf of the Beneficiary or the failure to appoint such a person; or

11.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.

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

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

13 **Law**

This warranty shall and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

This warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

Appendix 5
Overage Worked Examples

If:

Total Revenue = £200 million

Total Development Costs = £160 million

Net Private Revenue = £173 million

Base Developer Return = 22.5%

Then overage would be:

(£200m - £160m = £40m) – (£173m x 22.5% = £38,925,000)

£40m - £38,925,000 = £1,075,000

£1,075,000 x 50% = £537,500]

Appendix 6
Base Design and Submission

Appendix 7
Financial Model

Appendix 8
Building Lease

Appendix 9

Design Evolution Protocol, Stakeholder [Engagement](#) Protocol, Planning Protocol and
Construction Protocol

Appendix 10
Social Value Offer

Appendix 11

Phasing Plan

Plan B
Hatch House

Appendix 12
Stopping Up Plan

Appendix 13
Option Properties

Appendix 14
Deed of Variation to Lease

Appendix 15

Fire Strategy

Appendix 16
CF Curtilage Plan

Appendix 17
Affordable Housing Price Matrix

Document comparison by Workshare 9.5 on 19 October 2021 17:08:32

Input:	
Document 1 ID	interwovenSite://IDMS1BRS/ADMIN/33029996/1
Description	#33029996v1<ADMIN> - Agreement for Lease - Hill_RHP Engrossment_THL_150340172_1
Document 2 ID	interwovenSite://IDMS1BRS/ADMIN/33029996/2
Description	#33029996v2<ADMIN> - Agreement for Lease - Hill_RHP Engrossment_THL_150340172_1
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	47
Deletions	35
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	84