

JOINT VENTURE AGREEMENT WITH THE HCA

Dated

2012

- (1) Homes and Communities Agency
- (2) Scarborough Borough Council

Joint Venture Agreement

relating to proposed development of sites known as the Lower Tier, Upper Tier site and the Futurist Theatre Site in Scarborough

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THIS AGREEMENT is made on

2012

BETWEEN

- (1) **HOMES AND COMMUNITIES AGENCY** of Central Business Exchange II, 406-412 Midsummer Boulevard, Central Milton Keynes MK9 2EA ("**the Agency**", which includes any successors statutory or otherwise); and
- (2) **SCARBOROUGH BOROUGH COUNCIL** of Town Hall, St Nicholas Street, Scarborough, YO11 2HG. (the "**Council**").

BACKGROUND

- (1) The Parties have agreed to co-operate in realising the Development Brief in relation to the Site.
- (2) The Agency is the legal and beneficial owner of the Agency Land and the Council is the legal and beneficial owner of the Council Land.
- (3) The Parties' objectives are to:-
 - (a) generate development activity in accordance with the Development Brief or (as otherwise agreed between the Parties) which addresses to the satisfaction of the Parties all relevant planning, design and development issues in a manner which accords with the Development Brief;
 - (b) initially value the Site;
 - (c) develop the Site in accordance with the Development Brief (or as otherwise agreed between the Parties);
 - (d) identify and acquire any interests within the Site which it is necessary to acquire (whether by way of CPO or otherwise) for the purpose of procuring the development in paragraph (3)(e) of this Background;
 - (e) agree and implement a procurement, delivery, marketing, management and disposal strategies for the Site;
 - (f) devise a structure and mechanism for the maintenance of public access and public realm within the Site;
 - (g) the doing of such acts and things as may be consistent with necessary for or incidental to the achievement of any of the above objectives.

OPERATIVE PROVISIONS

It is agreed between the Parties as follows:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement (including the Background) the following words and expressions have the following meanings except where inconsistent with the context:-

"Accounting Period"

- (a) the period commencing on the date hereof and ending on 31st March

next following the date hereof; and

- (b) thereafter each period commencing on 1st April and ending on 31st March during the subsistence of this Agreement; and
- (c) the period commencing on 1st April next before the Termination Date and ending on the Termination Date
- (d) or such other accounting period as the Parties may agree in writing

“Acquisition Costs”

means:

- (a) any purchase price and liabilities payable to any owner leaseholder occupier or holder of any other compensatable interest of or in the CPO Land or (as appropriate) the Retail Units (excluding any interests of the Agency and the Council) arising out of the acquisition by the Council or the Agency whether by private treaty or compulsory purchase of the CPO Land; and
- (b) all reasonable and proper consultants’ professional and other fees incurred (other than any charges for the Council’s or the Agency’s own staff except for Internal Process Costs) by the Council or the Agency in procuring the acquisition of the CPO Land or (as appropriate the Retail Units)

“Additional Members”

those members of the Project Board drawn from the bodies interested in the re-development of central Scarborough appointed to the Project Board by the Parties from time to time pursuant to clause 6.1 (and for the avoidance of doubt excluding the Council Members and the Agency Members);

“Agency Authorisations”

such authorisations as the Agency from time to time requires to enable it to take any action pursuant to this Agreement including without limitation:

- (a) such internal Agency approvals (including without limitation any necessary Agency board approval) as are required;
- (b) any necessary approval of central government, the Treasury or of the relevant government department sponsoring the Agency for the

	relevant aspect of the Joint Venture from time to time
"Agency Land"	the land comprised in title numbers NYK113839 and NYK224733.
"Agency Members"	the two members appointed to the Project Board by the Agency pursuant to clause 6
"Agency Panel"	the Agency's panel from time to time of approved solicitors surveyors contractors consultants or professional team members for provision of any goods services or other supplies
"Agency's Equity Investment"	The sum of £3,000,000 plus [AMOUNT 1].
"Agency's Representatives"	David Curtis, Executive Director North East, Yorkshire and Humber or such other person or persons notified by the Agency to the Council in writing from time to time so that there are at all times at least two Agency's Representatives who are capable of making JV Decisions in relation to the Joint Venture
"Agency's Solicitors"	Eversheds LLP of Bridgewater Place Leeds (Reference: GLASSST/167880.000273) or such other firm of solicitors as the Agency shall from time to time appoint (and notify to the Council) to perform the functions of the Agency's Solicitors under this Agreement
"Alternative Accommodation Consents"	A valid planning permission (in respect of which any judicial review or other challenge period shall have expired without any appeal, proceedings, or challenge being brought in relation to such planning permission) permitting the opening and performing of the Civic Function on premises, other than the Site, in respect of which the Council has appropriate legal rights to enable them to open and perform such Civic Function from such alternative premises.
"Applicable Milestone Date"	Means, in the case of each Milestone, the date set out (in the same row of the table at Schedule 3 as the relevant Milestone) in the column headed "Applicable Milestone Date" in the table at Schedule 3 of this Agreement
"Applicable Milestone Dates"	Means the dates set out at the table at Schedule 3 to this Agreement in the column headed "Applicable Milestone Dates" and for the avoidance of doubt reference to the relevant "corresponding Applicable Milestone Date" shall mean, in relation to any Milestone, the Applicable Milestone Date in the same row of the table at Schedule 3 as that row in which the relevant Milestone is

placed.

“Artificial Deadlock”

A disagreement caused by a Party deliberately and without good reason voting against or failing to agree to an issue or proposal or failing to seek a reasonable and mutually acceptable resolution of any disagreement

“Auditors”

for each Party means such accountant or firm of accountants (being a member or members of the Institute of Chartered Accountants in England and Wales) as such Party from time to time appoints to audit that Party’s annual accounts

“Best Consideration Requirements”

means:

- (i) in the case of the Council, the provisions of Section 123 of the Local Government Act 1972; and
- (ii) in the case of the Agency, Section 10 of the Housing and Regeneration Act 2008

and such other legislation which from time to time governs the disposal of land by the Parties

“Business Plan”

such annual business plan relating to implementation of the Development Brief and the Core Strategies as is from time to time agreed between the Parties pursuant to clause 14

“Civic Function”

the ceremonial and civic role of the Council as a local authority including Council, Cabinet, Committees, Mayoralty and other such civic functions as are carried on at the Upper Tier Site as at the date hereof.

“Combined Investment Value”

the total of the Investment Values for both Parties

“Constitution”

the constitution of the Project Board as agreed between the Parties pursuant to clause 6.9 and amended from time to time by JV Decision

“Core Strategies”

means the following:

- (i) the Disposal Strategy as agreed pursuant to **clause 13.1**; and
- (ii) the Procurement Strategy as agreed pursuant to **clause 13.5**; and

(iii) the Management Strategy as agreed pursuant to **clause 13.7**; and

(iv) the Delivery Strategy as agreed pursuant to **clause 13.9**

(v) the Development Strategy as agreed pursuant to **clause 13.10**

"Costs"

all sums (including without limitation purchase monies premiums overage and clawback payments and other consideration) properly expended by or on behalf of either Party together with any costs expenses fees (statutory or otherwise) compensation claims demands liabilities and damages

"Council Activity or Council Activities"

Means:

a) any activities provided, performed or supplied by or on behalf of the Council at the Site (or any part of the Site) whether pursuant to the Council's statutory obligations or otherwise, and whether or not for profit; and

b) any other activity provided, performed or supplied at or relating to the Site (of any part of the Site) including for the avoidance of doubt any security, catering, or grounds or building maintenance activities thereon

whether or not such activities are carried out by persons employed or engaged by the Council or by persons employed or engaged by any third party contractor to the Council or by any sub-contractor of any such third party contractor;

"Council Activity Cessation"

Means the ceasing of the performance, provision or supply of any Council Activity at the Site (or any part of the Site)

"Council Activity Cessation Date"

Means the date of any Council Activity Cessation

"Council Authorisations"

such authorisations as the Council from time to time requires to enable it to take any action pursuant to this Agreement including without limitation:

(a) such internal Council approvals (including without limitation any necessary Council board approval) as are required;

(b) any necessary approval of central government, the Treasury or of the relevant government department sponsoring the Council for the relevant aspect of the Joint Venture from time to time

"Council Employee"	Means any person employed or engaged in any Council Activity at the Site
"Council's Equity Investment"	The sum of £1,000,000.
"Council's Bank"	National Westminster Bank Plc or such other UK clearing bank as the Agency shall approve (such approval not to be unreasonably withheld or delayed)
"Council Land"	the land shown edged red on Plan 1
"Council Members"	the 2 members appointed to the Project Board by the Council pursuant to clause 6.2
"Council Panel"	the Council's panel or approved shortlists from time to time of approved solicitors surveyors contractors consultants or professional team members for provision of any goods services or other supplies
"Council's Representative"	Lisa Dixon of Legal & Support Services, Scarborough Borough Council and Nick Edwards, Head of Finance and , Scarborough Borough Council or such other person or persons notified by the Council to the Agency in writing from time to time so that there are at all times at least two Council's Representatives who are capable of making JV Decisions in relation to the Joint Venture
"Council's Solicitors"	The Council's Legal & Support Services or such other solicitor or firm of solicitors as the Council shall from time to time appoint (and notify to the Agency) to perform the functions of the Council's Solicitors under this Agreement
"CPO"	Compulsory Purchase Order
"CPO Land"	such property or interest within the Site in relation to which the Parties may agree to pursue the use of compulsory purchase powers in order to facilitate the development of the Site in accordance with the terms of the Development Brief (or otherwise agreed between the Parties in writing) and the other terms of this Agreement
"CPO Powers"	the powers of compulsory purchase conferred by S226 of the Town and Country Planning Act 1990 and/or the Acquisition of Land Act 1981 and any other relevant legislation
"Delivery Teams"	The delivery teams to be formed by the Project Board as more particularly described in clause 7

"Delivery Strategy"	The delivery strategy as agreed pursuant to clause 13.9.
"Development Brief"	The Futurist and Town Hall Development Brief (draft January 2012) in the form attached hereto at Appendix 1 subject to such departures from the same as are from time to time agreed in writing between the Parties (whether or not such departures are approved by the Planning Authority)
"Development Costs"	the costs more particularly identified in Schedule 1
"Direct Losses"	Means damages, losses, indebtedness, claims, actions, costs (including the cost of legal or professional services, legal costs being on an indemnity basis), expenses, liabilities, proceedings, demands and charges whether arising under statute, contract or at common law, but excluding Indirect Losses;
"Director of Finance"	the director of finance (or such other equivalent function within the relevant organisation as exist from time to time) from time to time of the Agency or the Council (as the case may be)
"Disposal"	any disposal or agreement therefore whether leasehold or freehold (including without limitation a sale or transfer of freehold the grant assignment variation or surrender of a lease or licence to occupy and variation or release of covenants and grant variation or release of easements) of the Site or any part thereof or of any legal or beneficial interest therein or thereon or of any mines or minerals thereon or thereunder and "Dispose" and "Disposed" shall be constructed accordingly
"Disposal Strategy"	the disposal strategy as agreed pursuant to clause 13.1
"Development Strategy"	the development strategy as approval pursuant to clause 13.10
"EC Requirements"	Procurement Directive 2004/18/EC of the European Parliament and of the Council and Council Directive 89/665/EEC of the European Parliament and of the Council (as from time to time varied or amended) or any legislation implementing either or both of them
"EIR Exception"	any applicable exemption to EIR
"EIR"	the Environmental Information Regulations 2004 and any subordinate legislation made thereunder from time to time together with any guidance and/or codes of practice issued

by the Information Commissioner in relation to such legislation

“Employee Claims”

Means any claims brought by or on behalf of any Council Employee including any claims brought by any trade union or elected representative of any Council Employee whether pursuant to Regulation 13 of the TUPE Regulations or the Trade Union and Labour Relations (Consolidation) Act 1992 or otherwise;

“Exempted Information”

any information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions

“Existing Commitment”

any of the following:

- (a) any agreement between the Parties and any proposed development partner or partners for the development of the whole or part of the site; and
- (b) any agreement pursuant to which the Parties contract to Dispose of the whole or any part of the Site

“FOIA”

the Freedom of Information Act 2000 and any subordinate legislation made thereunder from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation

“FOIA Exemptions”

any applicable exemption to FOIA

“HCA Design and Quality Standards”

such design standards and/or requirements as the Agency is from time to time required to procure adherence to pursuant to internal or external requirements or policies (including by way of example only and without limitation the requirements of Building Research Establishment Environmental Assessment Method and ECO homes “Very Good”) in respect of projects to which the Agency provides funding or is otherwise involved

“Information”

information recorded in any form:

- (a) in relation to FOIA has the meaning given under section 84 of the FOIA; and
- (a) in relation to EIR has the meaning given under the definition of “environmental information” in

section 2 of EIR

“Information Commissioner”	The officer known as the Information Commissioner established by Section 6 of the Data Protection Act 1998
“Income”	Sale Proceeds and all other monies received or other income derived from or otherwise arising as a result of or in connection with the Site or the implementation of the Core Strategies
“Independent Third Party”	a surveyor (being a fellow or member of the Royal Institution of Chartered Surveyors of not less than 10 years standing) appointed by the Parties or, if they cannot or do not agree on the appointment, who is appointed at the request of either Party by the President (or other acting senior officer) for the time being of the Royal Institution of Chartered Surveyors SAVE THAT an Independent Third Party described in clause 16.13 shall (instead of being a surveyor as aforesaid) be a member of the Institute of Chartered Accountants in England and Wales appointed by the Parties or, if they cannot or do not agree the appointment, shall be appointed at the request of either party by the President (or other acting senior officer) for the time being of the Institute of Chartered Accountants in England and Wales
“Indirect Losses”	Means loss of profit, loss of business, loss of business opportunity (in each case whether direct, indirect or consequential) or any other claim for consequential or indirect loss of any nature;
“Initial Period”	the period prior to the Vacant Possession Event
“Interest Rate”	4% per annum above the base lending rate from time to time of the Bank of England (or such other bank being a member of the committee of London clearing banks as the Agency may nominate) calculated on a daily basis or if the base lending rate is no longer published or available for use 4% per annum above such other comparable rate of interest as the Agency reasonably specifies
“Internal Process Costs”	the reasonable and proper internal legal charges for the Council’s or the Agency’s own staff (as the case may be) in processing any CPO of CPO Land in accordance with the terms of this Agreement (to the extent only that such charges have been agreed in writing between the Parties prior to the same being incurred)

“Investment Value”

Means:

(a) for the Agency, the total of:

(i) the Agency’s Equity Investment; and

(ii) the Open Market Value of the Agency’s Land as agreed or determined pursuant to **clauses 15.8 to 15.11**; and

(iii) any other costs which the Agency incurs where the Parties have agreed within the terms of any Business Plan (approved hereunder by JV Decision) that the Agency may incur such costs on behalf of the Joint Venture;

AND

(b) for the Council, the total of:

(i) the Council’s Equity Investment; and

(ii) the Open Market Value of the Council’s Land (other than the Upper Tier Site) as agreed or determined pursuant to **clauses 15.8 to 15.11**

(iii) any other costs which the Council incurs where the Parties have agreed within the terms of any Business Plan (approved hereunder by JV Decision) that the Council may incur such costs on behalf of the Joint Venture;

“Joint Venture”

the joint venture between the parties established under this Agreement

“JV Decision”

a decision made and agreed or ratified in writing by at least one Agency’s Representative and one Council’s Representative

“JV Liabilities”

means all or any of the following:

(a) the Development Costs;

(b) any other valid debts, costs, obligations, or liabilities of the Joint Venture incurred on or behalf of the Parties

“Lower Tier Site”

Means the aggregate of that part of the Council Land hatched red on Plan 1 and the Agency Land

“Management Strategy”

the management strategy as agreed pursuant to **clause 13.7**

"Members"	the Council Members, the Agency Members and the Additional Members or any of them as the context may require
"Milestones"	The Milestones set out at the column headed "Milestones" in the table at Schedule 3 of this Agreement.
"Necessary Contract"	any building contract appointment consultant's brief lease licence development agreement or other contract or agreement which the Parties agree is necessary or desirable to facilitate or procure development of the Site in accordance with the Objectives (and which shall include without limitation any agreement with a development partner and any contract for Disposal)
"Objectives"	the Parties' objectives in relation to the Site as referred to in paragraph (3) of the Background
"Open Market Value"	market value as defined in the Practice Statement 3.2 (ps.3.2) of the RICS Appraisal and Valuation Manual issued in January 2008 as varied or amended from time to time or as defined in such other definition as may be from time to time agreed in writing between the Parties
"Parties"	the Agency and the Council or either of them as the case may be and "Party" will be construed accordingly
"Permitted Occupation"	Means a lease: <ul style="list-style-type: none"> (i) for a term which expires no later than 1 September 2013; and (ii) in respect of which a valid and enforceable Contracting Out Procedure has been carried such that the tenant under the lease does not and will not acquire rights of security of tenure
"Contracting Out Procedure"	Means: <ul style="list-style-type: none"> (i) The Council having served on the relevant tenant a notice in relation to the tenancy to be created by the Permitted Occupation in a form complying with the requirements of Schedule 1 to Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the Order"); and (ii) the tenant under the Permitted Occupation having made a statutory declaration in a form complying with

Schedule 2 to the Order;

"Planning Agreement"	any agreement required by the relevant local planning authority to be entered into as a condition of the grant or implementation of any planning consent, including any agreement pursuant to any one or more of section 38 or section 278 of the Highways Act 1980, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, section 111 of the Local Government Act 1972, section 106 of the Act (as amended by the Planning and Compensation Act 1991) or section 104 of the Water Industry Act 1991 and any variation, amendment or modification thereof
"Planning Authority"	the local planning authority from time to time for Scarborough
"Pre-Decision Notice Period"	The period from and including the date of this Agreement to and including the service of a Decision Notice in accordance with the terms of this Agreement.
"Procurement Strategy"	the procurement strategy as agreed pursuant to clause 13.5
"Project Board"	the board of representatives more particularly described in clause 6
"Public Sector Panel"	any of the following: (a) the Agency Panel; or (b) the Council Panel; or (c) any other (national or regional) panel of consultants or contractors which has been designed for use by public sector organisations and to which the Council and/or the Agency have access
"Quarterly Accounts"	any quarterly accounts prepared pursuant to clause 16.13
"Quarters"	the quarters in each year commencing on 1 January and ending on 31 March, commencing on 1 April and ending on 30 June, commencing on 1 July and ending on 30 September and commencing on 1 October and ending on 31 December; and "Quarter" shall be construed accordingly.
"Referee Panel"	a panel to be created from time to time consisting of the Chief Executive of the Council the Chief Executive of the Agency and two Council Members nominated by the Council and two representatives of the

	Agency nominated by the Agency
“Request for Information”	shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Site, this Agreement, or any activities or business of the Agency or the Council
“Retail Units”	any leasehold interests issuing out of the Council’s freehold interest in the properties shown edged red on plan 2.
“Review Period”	the period commencing on the date hereof and ending on each anniversary of such date and each subsequent period of 1 year thereafter during the subsistence of this Agreement
“Sale Proceeds”	the consideration (net of Value Added Tax) paid to the Agency or the Council arising from a Disposal of the Site or any part of it (including without limitation rent payments clawback and overage payments and consideration payments of deferred consideration and income derived from joint ventures and partnership arrangements)
“SI Contractors”	These consultants and/or contractors appointed by the Agency to carry out all or any of the Site Investigations
“Site”	the Agency Land the Council Land
“Specified Area”	means the areas shown edged red and blue on plans 3, 4, 5 and 6 attached hereto
“Specified Function”	The “Customer First” function currently provided by the Council from the Upper Tier Site as at the date hereof.
“Termination Date”	the date of expiration or sooner determination of this Agreement (however determined)
“Title Investigations”	Such investigations, searches and enquiries in relation to the Council Land and the Council’s title to the Council Land as the Agency or its advisors propose to carry out.
“TUPE Regulations”	Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, varied or replaced from time to time
“Upper Tier Site”	Means that part of the Council Land not hatched red on Plan 1.
“Vacant Possession Event”	(subject to clause 4.3) means the point at which the Council obtains vacant possession

of the Upper Tier Site

“VAT”

Value Added Tax including any tax of a similar nature that may be substituted for it or levied in addition to it

“Working Day”

a day falling on or between Monday to Friday on which clearing banks in the City of London are (or would be but for a strike, lockout or other stoppage, affecting particular banks or banks generally) open during banking hours and “Working Days” shall be construed accordingly

- 1.2 References to a Clause Schedule or paragraph are to a Clause Schedule or paragraph of this Agreement.
- 1.3 The clause headings in this Agreement are for ease of reference only and are not to be taken into account in the interpretation of the clause to which they refer.
- 1.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.5 Words of one gender include both other genders and words denoting natural persons include corporations and firms and all such words are to be construed interchangeably in that manner.
- 1.6 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done, and words placing a party under a restriction include an obligation not to knowingly permit infringement of that restriction.
- 1.7 References to “liability” or “liabilities” include, where the context allows, claims demands proceedings damages losses costs and expenses.
- 1.8 Unless the context otherwise requires references to the Site the the Agency Land the Council Land or the CPO Land shall be deemed to include a reference to any part or parts of the same.
- 1.9 References to developers and development partners include development partnerships and prospective developers under joint venture agreements.
- 1.10 References to an estate or interest in land include without limitation the benefit of positive and restrictive covenants easements rights options rights of pre-emption and other interests in land and the right to clawback and overage payments in respect of or associated with land.
- 1.11 References to any enactment, order, regulation or instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, modified, extended re-enacted or replaced by any subsequent enactment, order, regulation or instrument.

2. **CONSIDERATION**

In consideration of the mutual agreements and undertakings set out in this Agreement, the parties have granted the rights and accepted the obligations in this Agreement.

3. **THE AGENCY'S OBLIGATIONS**

3.1 The Agency will use all reasonable endeavours to achieve the Objectives and in particular (but without limitation) will use all reasonable endeavours where appropriate to:-

3.1.1 provide to the Council full details of all land and buildings comprising the Agency Land and to provide replies to CPSE enquiries and other reasonable enquiries as to the Agency's title to the Agency Land;

3.1.2 (subject to obtaining any necessary Agency Authorisations) agree with the Council:-

3.1.2.1 any amendments to the Development Brief;

3.1.3 Negotiate and enter into any relevant Planning Agreements in its capacity as landowner in accordance with **clause 30** in accordance with the Development Brief and/or the development of this Site in accordance with the terms of this Agreement (provided that it shall only be obliged to enter into such Planning Agreements as landowner where it has received a full indemnity from the relevant developer in relation to its obligations under the terms of the Planning Agreement or the relevant obligations do not come into effect until implementation of the relevant planning permission);

3.1.4 Until the Vacant Possession Event the Agency shall procure that, in relation to the Agency Land public liability insurance (whether through self insurance or otherwise) is maintained against liability to the public and to third parties in such sum as shall be prudent and save where this is by way of self insurance to note the interest of the Council upon any policy;

3.1.5 Until the Vacant Possession Date the Agency shall insure or procure insurance of (which may be by way of self insurance) the Agency Land and buildings upon it to its reinstatement value against standard insured risks and, save where this is by way of self insurance, to note the interest of the Council upon any policy.

3.1.6 Not to anything which would adversely affect the value of the Agency Land or the ability to develop the Agency Land in accordance with the terms of this Agreement.

3.1.7 Until the Vacant Possession Date, keep the Agency Land in a safe condition.

4. **THE COUNCIL'S OBLIGATIONS**

- 4.1 The Council will use all reasonable endeavours to achieve the Objectives and in particular (but without limitation) will use all reasonable endeavours where appropriate to:-
- 4.1.1 confirm commitment at Council member and senior officer level to the processes provided for in this Agreement and consult Council members in connection with any matters hereunder whenever appropriate;
 - 4.1.2 provide to the Agency full details of all land and buildings comprising Council Land;
 - 4.1.3 (subject to obtaining any necessary Council Authorisations) agree with the Agency:-
 - 4.1.3.1 any amendments to the Development Brief;
 - 4.1.4 (in each case at its own cost) propose to the Planning Authority for adoption (in its capacity as landowner in accordance with **clause 30**) adoption of the Development Brief and any master plans prepared hereunder as supplementary planning guidance, provided (for the avoidance of doubt) that the same does not fetter the discretion of the Council as local planning authority in respect of the Site) and (in its said capacity as landowner only) to use all reasonable endeavours to procure that the Planning Authority apply the same in considering planning applications submitted by proposed developers of the Site;
 - 4.1.5 In the event that there is a change to the Development Brief (agreed between the Parties) then the provisions of clause 4.1.4 shall apply mutatis mutandis any such amended Development Brief;
 - 4.1.6 Negotiate and enter into any relevant Planning Agreements in its capacity as landowner in accordance with **clause 30** in accordance with the Development Brief and/or the development of this Site in accordance with the terms of this Agreement (provided that it shall only be obliged to enter into such Planning Agreements as landowner where it has received a full indemnity from the relevant developer in relation to its obligations under the terms of the Planning Agreement or the relevant obligations do not come into effect until implementation of the relevant planning permission);
 - 4.1.7 where reasonably appropriate to consult in conjunction with the Agency throughout the process of implementation of the Development Brief with key stakeholders in Scarborough;
 - 4.1.8 as landowner adhere to any supplementary planning guidance from time to time adopted by the Planning Authority to reflect the Development Brief;

- 4.1.9 Until the Vacant Possession Event the Council shall procure that in relation to the Council Land public liability insurance (which may be by way of self insurance) is maintained against liability to the public and to third parties in such sum as shall be prudent and save where this is by way of self insurance to note the interest of the Agency upon any policy;
 - 4.1.10 Until the Vacant Possession Date the Council shall insure or procure the insurance of (which may be by way of self insurance) the Council Land and buildings upon it to its reinstatement value against standard insured risks and save where this is by way of self insurance to note the interest of the Agency upon any policy.
 - 4.1.11 Not to anything which would adversely affect value of the Council Land or the ability to develop the Council Land in accordance with the terms of this Agreement.
 - 4.1.12 Until the Vacant Possession Date, keep the Council Land in a safe condition.
- 4.2 The Council shall use all reasonable endeavours to achieve each of the Milestones by the relevant corresponding Applicable Milestone Date.
- 4.3 The Council shall still be regarded as having achieved the Vacant Possession Event if the only remaining occupations in respect of the Upper Tier Site include the personnel of the Specified Function or the Civic Function remaining in occupation of the Specified Area subject to the Council complying with its obligations under **clause 4.4**
- 4.4 Notwithstanding the occurrence of the Vacant Possession Event, the Council shall procure that:
- 4.4.1 any permitted occupations under the terms of **clause 4.3** do not create any relationship of landlord and tenant and do not give rise to the occupant accruing any rights of security of tenure; and
 - 4.4.2 the Council shall procure that such occupations are terminated and removed by such date as the Agency (acting reasonably) requires to ensure that such occupations do not adversely affect the progress of the Joint Venture, or the procurement of a development partner or the delivery of development upon the Site.
- 4.5 The Council shall not be entitled to delay or withhold its agreement to any Core Strategy, proposals for procurement of a development partner or delivery of development on the Site purely by reason of the existence of any ongoing occupations pursuant to **clause 4.3**.

5. **DECISION MAKING**

5.1 All decisions in relation to this Agreement (including without limitation the giving of any consents, agreements or approvals) and the Joint Venture are to be taken by JV Decision.

5.2 Without limiting the other obligations in this Agreement the Parties will procure (save to the extent otherwise agreed in writing between the Parties) that any development of the Site is carried out in accordance with the Development Brief.

6. **PROJECT BOARD**

6.1 The Agency will be responsible in conjunction with the Council and taking the initial steps to form, as soon as reasonably practicable after the date of this Agreement, the Project Board comprising:

6.1.1 2 members appointed by the Agency; and

6.1.2 2 members appointed by the Council; and

6.1.3 together with such Additional Members as the Parties may from time to time by joint notice in writing agree (provided that such Additional Members shall have not voting rights).

6.2 Prior to the agreement of the Parties in relation to the number and identity of Additional Members pursuant to **clause 6.1** representation on the Project Board will be 2 members appointed by the Agency and 2 members appointed by the Council.

The Parties shall each nominate, in writing to the other Party, by no later than 30 April 2012 those persons which the relevant Party appoints as its two members on the Project Board.

6.3 The Parties shall be entitled (but not obliged) jointly to appoint an employee of the Agency to the Project Board as a full-time director of the Project Board and from time to time to determine the terms of appointment of such director.

6.4 Each Party shall have the right to remove its appointed member or members to the Project Board and appoint another member in the place of any member so removed by giving seven days' prior written notice of its proposal to do this to the other Party but, save as provided in **clause 6.5**, neither Party shall be entitled to remove any member appointed by the other Party without such Party's prior written consent.

6.5 The Parties shall be entitled to remove at any time any Additional Member from his or her position on the Project Board by joint notice in writing from the Parties. Removal shall take effect from the date and time indicated in such notice. Following such removal, unless a majority of the Project Board agrees to the contrary, the relevant body or organisation from which such removed Additional Member was drawn shall be invited to nominate a replacement

Additional Member. The Parties may then appoint such nominated person as a replacement Additional Member in accordance with **clause 6.1**.

- 6.6 The Parties shall in good faith and using their respective reasonable endeavours negotiate or procure the taking place of negotiations to achieve a satisfactory resolution of any dispute at any meeting of the Project Board or of any matter on which the Project Board is unable to pass a resolution in accordance with the Constitution.
- 6.7 The role of the Project Board will be advisory only and it shall have no power to bind or commit either of the Parties to the adoption of any course of action, including but not limited to the decision whether or not to proceed with a particular proposal for development of the Site or any part of the Site. Nothing shall require the Parties to adopt any of the recommendations of the Project Board and, if the Parties decide to adopt any recommendations of the Project Board, the Parties may adopt such recommendations with or without amendment as they, in their absolute discretion, see fit and approve by way of JV Decision.
- 6.8 The Parties shall:
- 6.8.1 Appoint a chairman of the Project Board (and such chairman shall initially be one of the members appointed to the Project Board by the Agency or the Council and the performance of the role of chairman shall be rotated between the Agency Members and Council Members (on an alternate basis between Agency Members and Council Members) on a six monthly basis;
 - 6.8.2 Be entitled (but not obliged) if both Parties agree to appoint any of the Additional Members to perform the role of chairman of the Project Board; and
- 6.9 The Parties shall use their respective reasonable endeavours to agree:
- 6.9.1 the constitution which will be adopted by the Project Board; and
 - 6.9.2 a protocol dealing with the nature of evidence of authorisation which either Party shall provide when JV Decisions are being made
- 6.10 The Parties agree that the Constitution will be adopted on and with effect from the date of this Agreement subject to such changes as the Parties may agree by JV Decision. The Parties shall comply with and procure the compliance by their respective members on the Project Board with the Constitution.
- 6.11 The Parties shall use their respective reasonable endeavours to agree the detailed terms of reference of the Project Board as soon as reasonably practicable after the date of this Agreement but, in outline, such terms of reference will, inter alia, deal with the following issues

6.11.1 Function

One function of the Project Board will be to:

- 6.11.1.1 form a Delivery Team to deal with all key areas of activity required to implement the Development Brief, the Business Plan and the Core Strategies;
- 6.11.1.2 following formation, deal with the appointment and removal from time to time of members of the Delivery Team;
- 6.11.1.3 co-ordinate and supervise the activities of the Delivery Team.

7. **DELIVERY TEAMS**

7.1 The Project Board shall be responsible for the formation of the Delivery Team in accordance with **clause 7.2** and for agreeing appropriate terms of reference so that the Delivery Team functions in an appropriate and efficient manner.

7.2 The Delivery Team shall comprise individuals who have the appropriate knowledge, experience and expertise. It shall be for the Project Board to determine the number of members on the Delivery Team and to determine which are from (or represent) the Agency and which are from (or represent) the Council. Such individuals shall be selected from the areas of expertise from time to time designated by the Parties. Such individuals may be representatives and/or personnel of either of the Parties and other organisations and bodies from time to time agreed between the Parties.

7.3 The Parties may replace their appointed members of the Delivery Team on reasonable notice.

7.4 Each member of a Delivery Team will be employed or engaged by the Party or other organisation or body for whom they are employed or by whom they are appointed provided that all members shall report in relation to matters concerning the Delivery Team to the chairman of the Project Board.

7.5 The detailed terms of reference of each of the Delivery Teams shall be agreed in writing by the Project Board at such time as it decides to be appropriate but, in outline, such terms of reference will, inter alia, deal with the following issues:

7.5.1 Function

The function of the Delivery Team will be to implement the Development Brief and Core Strategies by reference to the Business Plan. In so doing, each Delivery Team shall deal with, amongst other relevant matters:

- 7.5.1.1 programme management;

- 7.5.1.2 development; and
- 7.5.1.3 planning/design; and
- 7.5.1.4 property appraisal; and
- 7.5.1.5 site management.

7.5.2 The role of the Delivery Team will include procuring the implementation of the Core Strategies but always with reference to and agreement by the Project Board.

7.6 The Parties shall procure that the Project Board will agree, as soon as reasonably practicable after the formation of the Delivery Team, the nature and extent of the powers of such Delivery Team, protocols in respect of the timing and frequency of meetings (to which the Parties shall procure adherence by the Delivery Teams) the requirements as to notices and agendas for and minutes of meetings and the circulation of information prior to meetings.

8. AGREEMENT ON LIABILITIES

8.1 Save as may be agreed in writing by the Parties (by way of JV Decision) or as expressly provided in this Agreement and subject to **clauses 16.1** and **16.5**:

8.1.1 neither Party shall have any power or authority to bind the other Party in any way in respect of any matter;

8.1.2 the Council shall be and will at all times remain solely:

8.1.2.1 responsible for all rights, duties and obligations of whatsoever nature which it has or to which it is subject as at the date of this Agreement, or which arise at any time thereafter, in respect of any of the activities, which are carried on by or on behalf of the Council, or with the acts or omissions of the Council or its employees, servants or agents, in relation to the performance or exercise of any of the Council's rights, duties and obligations directly or indirectly arising under or as a consequence of this Agreement and whether such rights, duties or obligations arise in contract, tort (including, without limitation, negligence or breach of statutory duty), misrepresentation or under any award, judgement, order, enactment, regulation or instrument or common law; and

8.1.2.2 liable for all costs, expenses, losses, liabilities (including, without limitation, any tax, duty, impost, levy, fine or penalty of the United Kingdom or elsewhere, whether governmental or municipal (including, without limitation, VAT, customs and other import or export duties, rates, stamp duty, stamp duty reserve tax, national insurance

and social security contributions)), damages, awards, proceedings, orders and judgements whatsoever for which the Council is or should be responsible as referred to in **clause 8.1.2.1** whenever and howsoever arising (including, without limitation, by reason of negligence)

8.1.3 the Agency shall be and will at all times remain solely:

8.1.3.1 responsible for all rights, duties and obligations of whatsoever nature which it has or to which it is subject as at the date of this Agreement, or which arise at any time thereafter, in respect of any of the activities, which are carried on by or on behalf of the Agency, or with the acts or omissions of the Agency or its employees, servants or agents, in relation to the performance or exercise of any of the Agency's rights, duties and obligations directly or indirectly arising under or as a consequence of this Agreement and whether such rights, duties or obligations arise in contract, tort (including, without limitation, negligence or breach or statutory duty), misrepresentation or under any award, judgement, order, enactment, regulation or instrument or common law; and

8.1.3.2 liable for all costs, expenses, losses liabilities (including, without limitation, any tax, duty, impost, levy, fine or penalty of the United Kingdom or elsewhere, whether governmental or municipal (including, without limitation, VAT, customs and other import or export duties, rates, stamp duty, stamp duty reserve tax, national insurance and social security contributions)), damages, awards, proceedings, orders and judgements whatsoever for which the Agency is or should be responsible as referred to in **clause 8.1.3.1** whenever and howsoever arising (including, without limitation, by reason of negligence)

9. **CONTRACTS**

9.1 Save where expressly otherwise indicated or agreed between the Parties, the Parties will jointly be the contracting parties in any Necessary Contract relating to the Site, provided always that in respect of management of the Site prior to the Vacant Possession Event, each party will be responsible for the costs and payment due under any contract relating to the management of the parts of the Site in their respective ownerships.

9.2 Subject to **clause 33** any consultant contractor or professional team member (which shall not for the avoidance of doubt include any development partner) will where applicable be selected from a relevant Public Sector Panel following a tender process compliant with the EC Procurement Requirements (if applicable)

and any internal contract procedure rules which either the Agency or the Council are required to adhere to from time to time BUT SO THAT where in the reasonable opinion of either of the Parties none of the consultants contractors or professionals from time to time on the relevant Public Sector Panel have the experience or qualifications required for relevant Necessary Contract the Parties shall (subject to **clause 33**) select a consultant contractor or professional team member which does have the requisite experience or qualifications for the relevant Necessary Contract otherwise than from the relevant Public Sector Panel.

9.3 Each Party ("Active Party") shall:

9.3.1 not do any act or make any omission which would cause either of the Parties to be in breach of any Necessary Contract; and

9.3.2 co-operate in good faith (and acting reasonably) in order to agree any steps to be taken in enforcement of any rights or compliance with any obligations on the part of the Parties (whether jointly or severally or otherwise) under the terms of any Necessary Contract having regard to the Objectives; and

9.3.3 pay and reimburse to the other Party the costs, losses and expenses such other Party has incurred, including without limitation pursuant to any Necessary Contract, by reason of the breach by the Active Party of the terms of this clause 9.3.

9.4 Save where expressly otherwise indicated or agreed between the Parties:

9.4.1 the Parties shall not enter into any contract affecting the Site without the approval of the other Party, such approval not to be unreasonably withheld or delayed where:

9.4.1.1 the relevant contract does not constitute a Disposal (in respect of which **clause 23** shall apply); and

9.4.1.2 the relevant contract and/or the activities to be carried out thereunder do not and will not adversely affect or delay the progression and delivery of the Joint Venture, the Objectives and the Core Strategies (in each case in accordance with the terms of this Agreement); and

9.4.1.3 the relevant contract is terminable on reasonable notice.

9.5 The Council has disclosed to the Agency all contracts affecting the Council Land of which it is aware prior to the date of this Agreement.

10. **ADMINISTRATION AND APPRAISAL**

10.1 Before any legal commitment to incur any Development Costs or JV Liabilities is entered into by the Parties a financial appraisal of the project to which such

Development Costs or JV Liabilities relate will be carried out by the Parties jointly.

- 10.2 The Project Board will procure the carrying out of financial appraisals of each element of the activities carried out hereunder during the progress of the same and shall the same to the attention of the Project Board if without limitation these highlight any information which suggests or anticipates that the Joint Venture is not likely to or will not produce Income which exceeds the Combined Investment Value.
- 10.3 To the extent that any formal internal approval of the Council is required to take any action under this Agreement the Council will promptly make the necessary applications or undertake the necessary actions to request such approval but will not be obliged to take such action unless and until such approval is granted.
- 10.4 To the extent that any Agency Authorisation is required to take any action under this Agreement, the Agency will promptly make the necessary applications or undertake the other actions necessary to request such Agency Authorisation, but will not be obliged to take such action unless and until such Agency Authorisation is granted.
- 10.5 To the extent that the Agency's participation or continued participation in any aspect of the activities to be carried out hereunder requires approval of central government or any governmental department (including by way of example only and without limitation where such approval to anticipated Development Costs or JV Liabilities or anticipated increases in Development Costs or JV Liabilities is required) the Agency will request such approval but any such aspect of such activities shall not proceed or shall not proceed further until such approval has been obtained.
- 10.6 To the extent that the Council's participation or continued participation in any aspect of the activities to be carried out hereunder requires approval of central government or any governmental department (including by way of example only and without limitation where such approval to anticipated Development Costs or anticipated increases in Development Costs is required) the Council will request such approval but any such aspect of such activities shall not proceed or shall not proceed further until such approval has been obtained

11. **FUNDING**

- 11.1 Neither Party will be obliged to provide any further funding pursuant to this Agreement. In the event that, after the Vacant Possession Event, there are insufficient monies in the Development Account to meet JV Liabilities (for a reasonable period in the future) then if the Parties are unable to reach agreement as to how to settle JV Liabilities and thereafter to fund the activities of the Joint Venture either party may refer the failure to agree to the Referee Panel in accordance with clause 20 and the provisions of clause 20 shall apply.

11.2 Without limiting the other provisions of this Agreement each Party ("the Supplying Party") will on request by the other Party ("the Reviewing Party") supply to the Reviewing Party all relevant information in respect of any Development Costs which the Supplying Party has incurred or is proposing to incur so as to enable the Reviewing Party to review and monitor any such Development Costs.

12. **THE CPO LAND AND RETAIL UNITS**

12.1 During the subsistence of this Agreement either Party may from time to time propose any land or buildings which should in such Party's opinion comprise CPO Land and upon making of any such proposal the Parties will discuss and use all reasonable endeavours to agree (having regard without limitation to the Development Brief and the Core Strategies) whether it is necessary or desirable to acquire such CPO Land to facilitate development of the the Agency Land and the Council Land in accordance with the Objectives. Any land agreed to be acquired hereunder shall comprise CPO Land.

12.2 Following the agreement of the extent of any such CPO Land pursuant to **clause 12.1** the Council Parties will use all reasonable endeavours to acquire such CPO Land and the Council shall give due consideration to use of its CPO Powers to facilitate acquisition of such CPO Land.

12.3 The Council shall use all reasonable endeavours to acquire the Retail Units as soon as practicable following the date hereof (including without limitation giving due consideration to the use of its CPO Powers to acquire the Retail Units) provided that:

12.3.1 the Council shall not be obliged to complete any acquisition of the Retail Units during the Pre-Decision Notice Period to the extent that completion of the acquisition will result in the Council incurring greater than [AMOUNT 1] of Acquisition Costs in relation to the Retail Units; and

12.3.2 the Council shall be entitled to reimbursement from the Development Account of any amount by which the Acquisition Costs in relation to the Retail Units exceeds the sum of [AMOUNT 1]

12.4 The Council will keep the Agency fully informed of the progress of any such compulsory purchase or acquisition in relation to the CPO Land and the Retail Units.

13. **CORE STRATEGIES**

13.1 A marketing and Disposal strategy for the Site (in appropriate phases or parts) will be agreed by the Parties acting on the basis of the recommendations in and in accordance with the Development Brief (or as otherwise agreed between the Parties) ("the Disposal Strategy"). The Disposal Strategy will whenever appropriate be updated by agreement between the Parties.

- 13.2 The Disposal Strategy will inter alia recommend the optimum method by which the Parties should Dispose of the various parts of the Site of which it is appropriate to Dispose and the marketing strategy for Disposals and in particular (but without limitation) will provide for:-
- 13.2.1 identification of individual parts of the Site for Disposal and development by individual developers or development partners in accordance with the Objectives;
 - 13.2.2 a rolling appraisal process to ensure development and Disposal of the Site in accordance with the Objectives remains commercially viable throughout the course of such development;
 - 13.2.3 provision where reasonably appropriate for clawback or overage payments to be made to the Parties or one of the Parties by any third party acquiring an estate or interest in the Site;
- 13.3 The Parties will procure that Project Board will as soon as practicable after its appointment formulate a mechanism to streamline transfers of parts of the Site pursuant to the Disposal Strategy with a view to rendering the same as straightforward as practicable and if reasonable to do so maximising stamp duty efficiency.
- 13.4 The Parties will use all reasonable endeavours to procure the Disposal of those parts of the Site of which it is appropriate to Dispose as soon as possible in accordance with the Disposal Strategy and the other Core Strategies.
- 13.5 A strategy for procurement of a development partner or development partners to facilitate development of the Site in accordance with the other Core Strategies and the terms of this Agreement (in phases or parts if appropriate) will be agreed by the Parties ("the Procurement Strategy"). The Procurement Strategy will whenever appropriate be updated by agreement between the Parties.
- 13.6 The Procurement Strategy will without limitation establish any criteria for tendering processes (consistent with EC Procurement Requirements) to be carried out in respect of the activities of the Joint Venture (including without limitation the procurement of any development partner or partners).
- 13.7 A strategy for management of the Site (in a manner with the terms of this Agreement and the other Core Strategies) will be agreed between the Parties ("Management Strategies"). The Management Strategy will whenever appropriate be updated by agreement between the Parties.
- 13.8 The Management Strategy will without limitation include:
- 13.8.1 arrangements as to how the Site is to be insured, maintained and managed pending and following entry into an agreement with a development partner or development partners for development or Disposal of the Site.

- 13.9 A strategy for delivery of development envisaged by the Objectives of the Site (in a manner consistent with the terms of this Agreement and the other Core Strategies) will be agreed between the Parties ("Delivery Strategy"). The Delivery Strategy will whenever appropriate be updated by agreement between the Parties.
- 13.10 A strategy for development of the Site (in a manner consistent with the terms of this Agreement and the other Core Strategies) will be agreed between the Parties ("Development Strategy"). The Development Strategy will whenever appropriate be updated by agreement between the Parties.
- 13.11 The Parties shall use all reasonable endeavours to agree such Core Strategies provided that neither Party shall be obliged (in complying with its obligations under this clause 13.11) to incur any costs payable to any person or party external to the relevant Party's organisation during the period prior to 1 January 2013;
- 13.12 The Parties shall procure that the Site is insured in accordance with the Management Strategy.

14. **BUSINESS PLAN**

- 14.1 The Parties will procure that in respect of each Accounting Period a proposed Business Plan is prepared (which shall set out anticipated Development Costs and other expenditure for such Accounting Period and will impose limits on the same which are not to be exceeded without the prior agreement of the Parties) and the Parties shall use all reasonable endeavours to agree the same. The Parties will cooperate with each other in relation to preparation of such Business Plan and will provide each other with such information and assistance as the Agency reasonably requires for the purpose of preparation or agreement of the same.
- 14.2 The Parties will procure that all JV Liabilities incurred hereunder are incurred only to the extent that they are in accordance with the Business Plan and in particular (but without limitation) that (unless the Parties expressly agree in writing) the same do not exceed the limits imposed therein.
- 14.3 All JV Liabilities and other expenditure hereunder will be accounted for in accordance with the provisions of **clause 16**.

15. **AGENCY'S EQUITY INVESTMENT, DISTRIBUTION OF INCOME, COUNCIL'S EQUITY INVESTMENT**
- 15.1 On the date hereof the Agency has paid to the Council the Agency's Equity Investment (receipt of which the Council hereby acknowledges).
- 15.2 Each Party will be entitled to payments (at the times and in the manner outlined at **clause 15.3** below) of:
- 15.2.1 a proportion of any Income equivalent to the proportion which the party's Investment Value from time to time bears to the Combined Investment Value of the Parties;
- 15.2.2 a proportion of any other sums standing to the credit of the Development Account from time to time equivalent to the proportion which the Party's Investment Value from time to time bears to the Combined Investment Value of the Parties.
- 15.3 The Council shall make payment of the entitlements to such proportions of any Income (as are referred to in **clause 15.2.1**) to each of the Council and the Agency within 15 Working Days of the expiry of each Accounting Period or otherwise as required by the terms of **clause 19** (Termination) or **clause 20** (Deadlock). Late payment by the Council will attract interest payable in accordance **with clause 28**.
- 15.4 The Council shall make payment of the entitlements to such proportions of sums standing to the credit of the Development Account (as referred to at **clause 15.2.2**) within 15 Working Days of the date when the whole of the Site and any other assets of the Joint Venture have been sold or otherwise disposed of and all sums paid into the Development Account have been utilised in reimbursing all Development Costs subject to making proper and prudent reserves for further or contingent liabilities; and
- 15.5 If there is a balance of JV Liabilities that has not been repaid or reimbursed, at the point of distribution in accordance with **clause 15.4**, Parties are to share any shortfall in proportions equivalent to the proportions which their respective Investment Values bear to the Combined Investment Value. To give effect to this the Parties shall pay such proportions into the Development Account.
- 15.6 The Council shall:
- 15.6.1 On or prior to 31 December 2012 pay the sum of £150,000 into the Development Account; and
- 15.6.2 On or prior to 1 April 2012 pay the sum of £1,850,000 into the Development Account.
- 15.7 The procedures in this **clauses 15.2 to 15.5** are to be repeated until all Income and capital receipts of the Joint Venture have been received, applied and

distributed in accordance with the terms of this Agreement and all Development Costs have been paid.

- 15.8 Within 15 Working Days of the date of this Agreement the Parties shall jointly appoint Jones Lang LaSalle (or, if Jones Lang LaSalle are unable to accept the appointment), such other firm of appropriately qualified surveyors on the Agency Panel as the Agency may notify in writing to the Council) to carry out a valuation of the Open Market Value (addressed to both of the Parties) of all parts of the Site (other than the Upper Tier Site) as soon as reasonably practicable and in any event by 31 May 2012.
- 15.9 If either party disagrees with the valuation (or any part of it) obtained pursuant to the terms of **clause 15.9** then the matter may be referred by either party to resolution by an independent expert in accordance with **clause 24**.
- 15.10 If either Party fails to confirm whether or not they accept the valuation obtained pursuant to **clause 15.9** within five working days of receipt of the valuation then such Party shall be treated having formally agreed the valuation and will lose its right to make any referral under **clause 15.9**.
- 15.11 The valuation of the Open Market Value as agreed or determined in accordance with **clauses 15.8 to 15.10** above shall bind the Parties.
- 15.12 The Upper Tier Site was valued prior to the date hereof at £2.2 million.

16. ACCOUNTING

- 16.1 In respect of the period prior to and including the Vacant Possession Event ("Initial Period"):
- 16.1.1 (subject to **clause 16.5.3**) The Parties shall each be responsible for all costs, liabilities and outgoings arising in relation to the parts of the Site (including without limitation there relating to management and holding) in their respective ownerships; and
- 16.1.2 The Parties shall each be entitled to retain all Income arising in relation to the parts of the Site in their respective ownerships
- Provided that for the avoidance of doubt where the relevant costs, liability or Income relates partly to a period after the Initial Period and partly to a period during the Initial Period then the Parties shall apply a reasonable proportion of the relevant costs, liability or Income in accordance with this **clause 16.1**.
- 16.2 The Council shall maintain on interest bearing account with the Council's Bank ("Development Account") for the purposes of Development Costs, JV Liabilities and Income.
- 16.3 The Council shall notify the Agency forthwith of the details of the Development Account.

- 16.4 Interest applicable to the Development Account will be at a reasonable commercial rate.
- 16.5 All JV Liabilities, irrespective of who incurs or pays them on behalf of the Joint Venture, are to be borne from the monies standing to the credit of the Development Account (unless expressly agreed between the Parties to the contrary) provided always:
- 16.5.1 that the Council shall at its sole expense pay and indemnify all costs or liabilities or other outgoings arising in relation to any part of the Council Land which is occupied (in accordance with **clause 4.4**) after the Vacant Possession Event;
- 16.5.2 any costs, liabilities and outgoings arising in relation to the parts of the Site (including without limitation those relating to management and holding) in their respective ownerships during the Initial Period shall not be borne out of the Development Account and shall be dealt with in accordance with **clause 16.1.1**;
- 16.5.3 that (notwithstanding the terms of **clause 16.1**) each party shall be liable to settle out of their own resources (rather than out of the Development Account) any costs arising out of the act or default of the relevant Party under the terms of this Agreement.
- 16.6 Each of the Parties is to procure that:
- 16.6.1 all receipts and profits (whether they are received by or on behalf of any of the Parties) in respect of the parts of the Site in their ownership in relation to the period after the Initial Period are paid into the Development Account within 15 working days of the end of each Accounting Period; and
- 16.6.2 all reasonable steps are taken to ensure that all such receipts and profits are paid (by the relevant person, firm or company making payment) directly into the Development Account; and
- 16.7 The Council is to keep a full account of all JV Liabilities and maintain the Development Account and proper books of account and prepare accounts for the Joint Venture as specified in this Agreement (in all cases in accordance with any accounting standards to which the Parties are required to adhere from time to time).
- 16.8 Any credit balance standing to the credit of the Development Account is to be held on trust for the payment of all JV Liabilities and for the payment of all sums due to the Parties in accordance with the terms of this Agreement.
- 16.9 The Council is to keep all invoices, vouchers, payment slips and other records and maintain books of accounts (in each case in relation to the JV Liabilities and in accordance with any accounting standards to which the Parties are required to

adhere from time to time) and is to ensure that they are made available for inspection by the Agency and its accountants and other authorised agents at all reasonable times.

- 16.10 At the end of each Accounting Period, the Council is to prepare and give to the Agency a full set of audited accounts (in respect of sums paid into and out of the Development Account and in relation to the incurring and settling of all JV Liabilities) in relation to that Accounting Period.
- 16.11 The Agency will have the right to request that the Council provides a written explanation of the accounting treatment of any items contained in or omitted from those accounts.
- 16.12 Each Party will maintain separate accounts (prepared by each Party in accordance with accounting standards to which such Party is from time to time required to adhere) in respect of Income received by or on behalf of such Party expenditure incurred by or on behalf of such Party and Investment Value of such Party (containing a full breakdown of how the same are calculated) and will within 14 working days of 31 March in each year supply to the other Party copies of such accounts and by 30 September in each year such accounts certified as described below together with, full details of such accounts and the treatment of items contained in such accounts and will deal with any reasonable queries raised by the other Party in respect of the same and/or provide any supporting information or documents reasonably requested by the other Party. Each Party will procure that the accounts so supplied by it have been certified by its Director of Finance as comprising an accurate statement of the matters referred to in this Clause (as such matters have prior to such certification been audited by the Auditors of the Party supplying such accounts within the general accounts of such Party).
- 16.13 If either Party does not agree with any entries in the accounts of the other Party supplied in accordance with **clause 16.12** the Parties shall use reasonable endeavours to resolve such disagreement but in default of such resolution such disagreement may be referred to an independent accountant appointed by the Parties or, if they cannot or do not agree upon the appointment, who is appointed at the request of either Party by the President (or other acting senior officer) for the time being of the Institute of Chartered Accountants in England and Wales in relation to whom the following provisions apply:-
- 16.13.1 the person so acting is to act as an expert;
- 16.13.2 the person so acting must afford the Parties an opportunity within reasonable time limits to make representations to him, and inform each Party of the representations of the other, and allow each Party to make submissions to him on the representations of the other;
- 16.13.3 the decision of the person so acting shall be final and binding upon the Parties (except for manifest error);

- 16.13.4 the fees of the person so acting in connection with the issue of his certificate are to be treated as an addition to the Development Costs.
- 16.14 Each Party will further prepare quarterly accounts in respect of each of the Quarters (prepared by each Party in accordance with accounting standards to which such Party is from time to time required to adhere) in respect of Income, expenditure incurred by or on behalf of such Party received by or on behalf of such Party and Investment Value of such Party for the Quarter to which such Accounts relate (containing a full breakdown of how the same are calculated) and will within seven days after the end of each Quarter supply to the other Party for approval such accounts for such Quarter. The provisions of **clause 16.11** shall apply in relation to such Quarterly Accounts (mutatis mutandis) as the same apply to annual accounts save that no Auditors' certification shall be required for the same.
- 16.15 The Parties will use reasonable endeavours to agree each set of Quarterly Accounts within 28 days following expiry of each Quarter but to the extent that the same have not been agreed within such period the provisions of **clause 16.12** (mutatis mutandis) shall apply in respect of finalising the same between the Parties.
- 16.16 In the event that the accounts prepared pursuant to **clauses 16.12** and **16.14** show that any Income has been received by either party in respect of the Site which has not been paid into the Development Account then the party in receipt of such Income shall pay such sums into the Development Account together with Interest in accordance with **clause 28** from the date on which the Income was received by the relevant Party until the date on which the Income is actually paid into the Development Account.
17. **OTHER COSTS**
- 17.1 The Parties will bear their own legal costs in connection with the negotiation of this Agreement.
18. **DECISION NOTICE AND DUE DILIGENCE**
- 18.1 The Council shall on or prior to 31 January 2013 serve notice in writing upon the Agency:
- 18.1.1 stipulating whether or not the Council wishes to proceed with the Joint Venture; and
- 18.1.2 attaching reasonable evidence that the Alternative Accommodation Consents have been obtained
- (such notice having referred to as "**Decision Notice**")
- 18.2 In the event that the Council serves a Decision Notice pursuant to **clause 18.1** which stipulates that the Council does not wish to proceed with the Joint Venture

or in the event that the Council fails to serve a valid Decision Notice within the required timescales set out in **clause 18.1** then:

- 18.2.1 the Council shall within five Working Days of the earlier of, firstly, the date of any Decision Notice (served by the Council pursuant to this **clause 18.1** stipulating that it does not wish to proceed with the Joint Venture) and, secondly, the 31 January 2013 pay to the Agency the sum of £3,000,000 plus [AMOUNT 1] in reimbursement of the Agency's Equity Investment; and
 - 18.2.2 the Agency may immediately remove the Agency Land from the Joint Venture; and
 - 18.2.3 the Council may immediately remove the Council Land from the Joint Venture; and
 - 18.2.4 the Council shall be entitled to the return of those elements of the £150,000 which the Council paid into the Development Account pursuant to **clause 15.6.1** to the extent only that such sums have not been expended by or on behalf of the Parties; and
 - 18.2.5 this Agreement shall automatically (on the earlier of the date of the relevant Decision Notice and the 31 January 2013) terminate save for the provisions of this **clause 18.2, clause 23.6, clause 23.7** and **clause 28** provided always that such termination shall be without prejudice to any antecedent breaches and the rights or remedies of the respective Parties in relation to such antecedent breaches.
- 18.3 In the event that a Decision Notice is served pursuant to **clause 18.1** (within the timescales set out therein) stipulating that the Council does wish to proceed with the Joint Venture but which fails to attach reasonable evidence that the Alternative Accommodation Consents have been obtained then:
- 18.3.1 the Parties shall consult (without obligation on either Party to agree any matter pursuant to this **clause 18.3.1** and so that the provisions of **clause 20** or **clause 19** shall not apply in relation to any failure to reach agreement pursuant to this **clause 18.3.1** or any failure by either party to observe and perform their obligations under this **clause 18.3.1**) as regards continuation of the Joint Venture; and
 - 18.3.2 in the event that by 28 February 2013 the Parties have not reached any written agreement (by JV Decision) as regards continuation of this Agreement (without obligation on either Party to agree any matter pursuant to this **clause 18.3.2** and so that the provisions of **clause 20** or **clause 19** shall not apply in relation to any failure to reach agreement pursuant to this **clause 18.3.2**) then:
 - 18.3.2.1 the Council shall within five Working Days of 28 February 2013 pay to the Agency the sum of £3,000,000 plus

[AMOUNT 1] in reimbursement of the Agency's Equity Investment; and

18.3.2.2 the Agency may immediately remove the Agency Land from the Joint Venture; and

18.3.2.3 the Council may immediately remove the Council Land from the Joint Venture; and

18.3.2.4 the Council shall be entitled to the return of those elements of the £150,000 which the Council paid into the Development Account pursuant to **clause 15.6.1** to the extent only that such sums have not been expended by or on behalf of the Parties; and

18.3.2.5 this Agreement shall this Agreement shall automatically (on 28 February 2013) terminate save for the provisions of this **clause 18.3, clause 23.6, clause 23.7** and **clause 28** provided always that such termination shall be without prejudice to any antecedent breaches and the rights or remedies of the respective Parties in relation to such antecedent breaches.

18.4 Time shall be the essence in relation to the service of notices by the Council pursuant to **clause 18.1**.

18.5 From the date hereof the Council shall grant the Agency (including its consultants and contractors) all reasonable access to the Council Land at all reasonable times to enable the Agency (and its consultants and contractors) to carry out such site investigations and surveys ("**Site Investigations**") in respect of the Council Land as the Agency requires.

18.6 The Agency shall furnish the Council with copies of any reports and findings prepared by the SI Contractors in relation to the Site Investigations.

18.7 The Council shall as soon as reasonably practicable and in any event before 31 May 2012 provide written replies to standard CPSE enquiries in respect of the Council Land and any interests relating to the Council Land. The Council shall respond promptly in relation to all further enquiries raised (including requests for additional information) by the Agency in connection with any responses to such CPSE enquiries.

18.8 If by the 30 June 2012:

18.8.1 the Agency, in its discretion, serves notice in writing upon the Council stipulating that it has not received such replies to CPSE enquiries in a form satisfactory to the Agency; and/or

18.8.2 the Agency serves notice in writing upon the Council stipulating that the Agency, in its discretion, considers that the matters revealed by the CPSE replies to enquiries (or any further enquiries raised by the Agency in respect of the same or any issue raised by the same) materially adversely affect the marketability or value of the Council Land and/or ability to develop the Council Land

then:

18.8.3 the Council shall within five Working Days of the date of service of the relevant notice pursuant to clause 18.8.1 or 18.8.2 pay to the Agency the sum of £3,000,000 plus [AMOUNT 1] in reimbursement of the Agency's Equity Investment; and

18.8.4 the Agency may immediately remove the Agency Land from the Joint Venture; and

18.8.5 the Council may immediately remove the Council Land from the Joint Venture; and

18.8.6 the Council shall be entitled to the return of those elements of the £150,000 which the Council paid into the Development Account pursuant to clause 15.6.1 to the extent only that such sums have not been expended by or on behalf of the Parties; and

18.8.7 this Agreement shall (on the date of service of the relevant notice pursuant to **clause 18.8.1 or 18.8.2**) automatically terminate but for the provisions of this **clause 18.8**, **clause 23.6** and **clause 23.7** and **clause 28** provided always that such termination shall be without prejudice to any antecedent breaches and the rights or remedies of the respective Parties in relation to such antecedent breaches.

18.9 If by 30 June 2012 the Agency, in its discretion, serves notice in writing upon the Council stipulating that the Agency considers that the matters revealed by and the findings of the Site Investigations materially adversely affect the value of the Council Land and/or the ability to develop the Council Land

then:

- 18.9.1 the Council shall within five Working Days of the earlier of firstly, the date of any notice served pursuant to **clause 18.9** and, secondly, 30 June 2012 pay to the Agency the sum of £3,000,000 plus [AMOUNT 1] in reimbursement of the Agency's Equity Investment; and
- 18.9.2 the Agency may immediately remove the Agency Land from the Joint Venture; and
- 18.9.3 the Council may immediately remove the Council Land from the Joint Venture; and
- 18.9.4 the Council shall be entitled to the return of those elements of the £150,000 which the Council paid into the Development Account pursuant to clause 15.6.1 to the extent only that such sums have not been expended by or on behalf of the Parties; and
- 18.9.5 this Agreement shall the earlier of firstly, the date of any notice served pursuant to clause 18.9 and, secondly, 30 June 2012 automatically terminate but for the provisions of this **clause 18.9, clause 23.6, clause 23.7** and **clause 28** provided always that such termination shall be without prejudice to any antecedent breaches and the rights or remedies of the respective Parties in relation to such antecedent breaches.

- 18.10 If by 30 June 2012 the Agency, in its discretion, serves notice in writing upon the Council stipulating that it considers that the matters revealed by and/or the findings of the Title Investigations materially adversely affect the value of the Council Land and/or the ability to develop the Council Land

then:

- 18.10.1 the Council shall within five Working Days of the earlier of firstly, the date of any notice served pursuant to **clause 18.10** and, secondly, 30 June 2012 pay to the Agency the sum of £3,000,000 plus [AMOUNT 1] in reimbursement of the Agency's Equity Investment; and

- 18.10.2 the Agency may immediately remove the Agency Land from the Joint Venture; and
- 18.10.3 the Council may immediately remove the Council Land from the Joint Venture; and
- 18.10.4 the Council shall be entitled to the return of those elements of the £150,000 which the Council paid into the Development Account pursuant to clause 15.6.1 to the extent only that such sums have not been expended by or on behalf of the Parties; and
- 18.10.5 this Agreement shall terminate on the earlier of firstly, the date of any notice served pursuant to clause 18.10 and, secondly, 30 June 2012 automatically terminate but for the provisions of this **clause 18.10, 23.6, 23.7** and **clause 28** provided always that such termination shall be without prejudice to any antecedent breaches and the rights or remedies of the respective Parties in relation to such antecedent breaches.

18.11 The Council shall from the date hereof:

- 18.11.1 fully deduce title to the entirety of the Council Land; and
- 18.11.2 shall use all reasonable endeavours to deal with any enquiries raised by the Agency in relation to such title and any searches which the Agency or its solicitors carry out in relation to the Council; and
- 18.11.3 take all reasonable steps outlined by the Agency to rectify any defects in the Council's title to the Council Land.

19. **TERMINATION**

19.1 Any Party is to be treated for the purposes of this **clause 19** as being in default if:-

- 19.1.1 it has not remedied in material respects all substantial breaches of its obligations under this Agreement after receiving notice from the other Party of that breach and the other Party having allowed it reasonable time to effect such remedy; or
- 19.1.2 it has committed breaches of obligation which are individually or cumulatively of such seriousness as to permit a Party to treat this Agreement as repudiated by breach; or
- 19.1.3 it has committed a breach of **clause 20.4**.

19.2 If either Party is in default in accordance with **clause 19.1** the other Party may whilst such default continues require, by serving written notice on the other Party ("Termination Notice"), that the provisions of **clause 20.3** shall apply (mutatis mutandis) as though the Termination Notice were a Deadlock Notice,

provided that neither of the Parties shall be entitled to serve a Termination Notice during the Pre-Decision Notice Period.

19.3 If the Council fails to achieve all or any of those Milestones with Milestone References (x), (xii), (xiii) or (xv) (time being of the essence) by the relevant corresponding Applicable Milestone Date then the following shall apply:

19.3.1 the Council shall within 15 Working Days of the relevant corresponding Applicable Milestone Date, pay to the Agency the sum of £3,000,000 plus [AMOUNT 1] in reimbursement of the Agency's Equity Investment; and

19.3.2 the Agency may immediately remove the Agency Land from the Joint Venture; and

19.3.3 the Council may immediately remove the Council Land from the Joint Venture; and

19.3.4 the Council shall be entitled to the return of those elements of the £2,000,000 to the extent that the Council has paid the same into the Development Account pursuant to **clause 15.6** to the extent only that such sums have not been expended by or on behalf of the Parties; and

19.3.5 this Agreement shall at 5 pm on the relevant corresponding Applicable Milestone Date automatically terminate but for the provisions of this **clause 19.3, 23.6, 23.7** and **clause 28** provided always that such termination shall be without prejudice to any antecedent breaches and the rights or remedies of the respective Parties in relation to such antecedent breaches.

20. DEADLOCK

20.1 In the event of the Parties failing to agree any matter the matter may be referred at the request of either Party to the Referee Panel which will afford to the Parties an opportunity to make representations to it and whose decision shall be final and binding on the Parties. In attempting to resolve such disagreement the members of the Referee Panel will each have equal voting rights.

20.2 If within two months of a disagreement between the Parties being referred to the Referee Panel pursuant to **clause 20.1** the Referee Panel fails to agree a resolution to such disagreement either Party may declare by notice in writing to the other Party that a "Deadlock Situation" has arisen.

20.3 (Subject to **clause 22**) in the event that either Party serves notice ("Deadlock Notice") in writing pursuant to **clause 20.2** (other than where the Deadlock Notice is served during the Pre-Decision Notice Period) above then either party at any time thereafter by serving written notice to the other Party ("Sale Notice") may (**subject to clause 20.5**) require that the Site be disposed of (by way of

freehold disposal) and that any other assets of the Joint Venture are disposed of and the provisions of **Schedule 2** shall apply to such disposals.

20.4 In any case where agreement is requisite to the continued operation of the Joint Venture, neither Party is to create or permit the creation or continuation of an Artificial Deadlock.

20.5 If a Sale Notice is served by the Agency then the Council will be entitled to exercise the right of pre-emption in accordance with Schedule 4 by serving a notice in writing upon the Agency ("**Pre-emption Notice**") within 5 Working Days of the relevant Sale Notice in which the effect of the Sale Notice will be suspended until such time as the procedures under Schedule 4 have been exhausted.

21. **REVIEW**

At the end of each Review Period the Parties will review progress made in relation to compliance with the terms of this Agreement and will consider whether it is appropriate to vary any of the terms of this Agreement.

22. **CONSEQUENCES OF TERMINATION**

In the event that a Sale Notice ("**Relevant Sale Notice**") is served at any time after any Existing Commitment has been legally entered into in relation to the whole or part of the Site then:

22.1 only those parts of the Site which are not the subject of an Existing Commitment shall be sold in accordance with **clause 20.3**; and

22.2 this Agreement shall continue in full force and effect in relation to those parts of the Site which are the subject of the relevant Existing Commitment

provided always that to the extent that the Existing Commitment ceases to apply to any part of the Site without such part of the Site being disposed of then following such cessation the Relevant Sale Notice shall be deemed to apply from the point of such cessation such that the relevant part of the Site will be sold in accordance with the terms of Schedule 2 (**subject to clause 20.5**).

23. **RESTRICTION ON DISPOSAL BY THE PARTIES**

23.1 The Parties will not sell lease or otherwise Dispose of the Site or any part of it during the subsistence of this Agreement except for a Permitted Disposal in relation to the Upper Tier Site only or as specifically permitted by virtue of the Business Plan and the Disposal Strategy or as subsequently agreed from time to time by the Parties in writing or directed by central government.

23.2 The Council and the Agency apply to the Land Registrar for a restriction to be entered on the title to the Council Land in the following Land Registry standard form:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the Agency or its solicitors that the provisions of [this Agreement] have been complied with."

- 23.3 The Council and the Agency apply to the Land Registrar for a restriction to be entered on the title to the Agency Land in the following Land Registry standard form:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the Council or its solicitors that the provisions of [this Agreement] have been complied with."

- 23.4 The Council shall give the certificate referred to in the restriction set out at **clause 23.3** in the event that the relevant Disposal has been made:

23.4.1 in accordance with the Disposal Strategy and the other terms of this Agreement; or

23.4.2 in accordance with and pursuant to **Schedule 2**.

- 23.5 The Agency shall give the certificate referred to in the restriction set out at **clause 23.2** in the event that the relevant Disposal has been made:

23.5.1 in accordance with the Disposal Strategy and the other terms of this Agreement; or

23.5.2 in accordance with and pursuant to **Schedule 2**.

- 23.6 The Agency shall take all necessary steps to remove the restriction referred to at **clause 23.3** in the event that:

23.6.1 the Agreement is terminated pursuant to the terms of **clause 18.2, clause 18.3, clause 18.8, clause 18.9, clause 18.10** or **clause 19**;

23.6.2 the Council has paid all sums due under **clauses 18.2, 18.3, 18.8, 18.9, 18.10** and **clause 19** (as appropriate).

- 23.7 The Council shall take all necessary steps to remove the restriction referred to at **clause 23.2** in the event that this Agreement is terminated pursuant to the terms of **clause 18.2, clause 18.3, clause 18.8, clause 18.9, clause 18.10** or **clause 19**.

24. **INDEPENDENT THIRD PARTIES**

- 24.1 Where this Agreement makes provision for a dispute or other matter to be referred to or for determination by an Independent Third Party the provisions of this **clause 24** will apply save where and to the extent otherwise indicated herein.

24.2 In relation to the Independent Third Party:

24.2.1 the person acting as such is to act as an expert;

24.2.2 the person so acting must afford the Parties an opportunity within the reasonable time limits to make representations to him, and inform each Party of the representations of the other, and allow each Party to make submissions to him on the representations of the other;

24.2.3 the decision of the person so acting shall be final and binding upon the Parties (except for manifest error);

24.2.4 the fees of the person so acting in connection with the issue of his certificate are allowable as Development Costs.

25. **GENERAL MATTERS**

The Parties may by agreement commission or procure commissioning of any necessary and costed reclamation or infrastructure works identified as required pursuant to the Development Brief.

26. **MUTUAL DUTIES OF THE PARTIES**

Subject to the provisions of the Freedom of Information Act and any other relevant statutory requirement and any policy made thereunder:

26.1 The Parties will co-operate with each other and act in fairness and in good faith to enable each other to discharge their duties and achieve the Objectives and accordingly will respond promptly to requests properly made by any Party for approvals information or assistance.

26.2 Each Party will at all times make full disclosure to the other of relevant information data and reports with respect to the Site and the provisions of this Agreement and will maintain clear "open book" records of Income and costs which they incur in relation to the parts of the Site within their ownership.

26.3 The Parties shall promptly and diligently:-

26.3.1 deduce title and reply to enquiries before contract and requisitions on title from any purchaser in respect of their respective land holdings; and

26.3.2 sign the contracts and execute licences, transfers or leases of the Site or any part of it and such other deeds or documents as may be necessary to deal with any Disposals of the Site which are to be entered into pursuant to this Agreement.

26.4 Any information disclosed by one Party (the Issuer) to another Party (the Recipient) pursuant to **clause 26.1 26.2 or 26.3** will be disclosed solely for the purpose of assisting the Recipient in connection with the fulfilment of the

obligations of the Recipient under this Agreement and strictly upon the basis that the Recipient will not disclose or allow to be disclosed any such information to any person other than the Issuer or any Member or use or allow to be used any Information for any other purpose. Further neither Party will disclose or allow to be disclosed this Agreement to any person (other than to the Issuer or to any Member) save insofar as necessary either to comply with such Party's obligations hereunder or insofar as reasonably necessary to facilitate achievement of the Objectives. The obligation of confidentiality imposed under **clause 26.5** will cease to apply to Information which enters the public domain through no fault of the Recipient.

26.5 In addition but without prejudice to the obligation of confidentiality under **clause 26.5** the Parties agree that to the extent that the Agreement and/or any Information in respect of which such Party is the Recipient rather than the Issuer (in whole or in part) enters the public domain, such Party will not do or omit to do anything which may result in the Agreement and/or such Information (in whole or in part as the case may be) being in the public domain to any greater extent that would otherwise have been the case.

27. **CONTINUATION OF THIS AGREEMENT**

The provisions of this Agreement will remain in full effect so far as they remain to be observed and performed after Disposal of the Site provided that none of the Parties shall be entitled to assign the benefit of this Agreement (except to any statutory successor of the Agency or the Council).

28. **INTEREST**

Where any amount is due to be paid by a Party under this Agreement the paying Party shall pay interest thereon at the Interest Rate for the period between the date on which the relevant amount should have been paid and the date on which it was paid (as well after as before judgment).

29. **VAT**

29.1 Any VAT chargeable in respect of any supply made by any Party to any other Party or Parties under this Agreement is to be paid at the same time as the consideration for that supply is provided unless the supply is treated as having been made earlier in which case the VAT is payable by the paying Party at that earlier time.

29.2 All payments to be made under this Agreement are expressed net of any VAT which may be properly payable.

29.3 If any Party receives a taxable payment and the VAT relating to it it must provide the paying Party with a receipted VAT invoice in respect of that payment as soon as possible.

29.4 In relation to each aspect of the Joint Venture the Parties shall (to the extent that they have not done so already) consult with each other as to whether it is

appropriate to exercise an option to tax to charge VAT on their respective parts of the Site to which such aspect of the Joint Venture relates

- 29.5 The Parties shall work together to identify an efficient approach to VAT and taxation in the context of the Joint Venture where possible.

30. **DISCRETION OF PARTIES AND FINANCIAL**

- 30.1 It is hereby agreed that nothing herein shall compel or oblige the Council to exercise its discretion or powers in anything other than its capacity as landowner and in particular shall not oblige the Council to act in its capacity as the local authority, planning authority or other statutory or competent undertaker and all the rights powers duties and obligations of the Council in the exercise of its statutory functions under any statute may be fully and effectively exercised in relation to the Site as if this Agreement had not been entered into.

- 30.2 It is further acknowledged that neither party shall be obliged to take any action hereunder which is in breach of:-

30.2.1 any relevant financial memoranda or regulations from time to time governing action taken by or expenditure to be incurred by such party;

30.2.2 any statutory requirements applicable to, or restrictions on the powers of, such Parties as statutory or public bodies.

31. **PARTNERSHIP EXCLUSION**

Nothing herein contained or in any document entered into or in the course of dealings conducted under or in any way relating to this Agreement or any provision hereof shall be construed as creating or effecting any partnership between the Parties.

32. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

33. **CONTRACTS AND CONTRACT AWARDS**

To the extent that any Necessary Contracts are governed by the provisions of the Public Contracts Regulations 2006 the Parties will be entitled to and will comply with their respective obligations under EU Procurement Requirements in relation to and in awarding any Necessary Contracts and will on request supply to the other Party copies of any minutes discussion documents reports and records of the selection and award process for any Necessary Contracts to which the EU Procurement Requirements apply.

34. **FREEDOM OF INFORMATION**

34.1 The Parties acknowledges that each of them are subject to legal duties which may require the release of information under FOIA and/or EIR and that each Party may be under an obligation to provide Information subject to a Request for Information.

34.2 Each Party shall be responsible for determining in their absolute discretion whether:

34.2.1 any Information is Exempted Information or remains Exempted Information; or

34.2.2 any Information is to be disclosed in response to a Request for Information

and in no event shall any Party respond directly to a Request for Information to which the other Party is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the other Party, unless otherwise expressly authorised to do so by that other Party.

34.3 Subject to clause 34.4 below, each Party acknowledges that the other may be obliged under FOIA or EIR to disclose information:

34.3.1 without consulting the other; or

34.3.2 following consultation with the other and having taken (or not taken, as the case may be) its views into account.

34.4 Without in any way limiting **clauses 34.1** and **34.3**, in the event that either Party receives a Request for Information such Party will, where relevant, as soon as reasonably practicable notify the other Party.

34.5 Each Party will assist and co-operate with the other as requested by the other to enable the relevant Party to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its employees, agents and sub-contractors will):

34.5.1 send to the other Party any Request for Information received as soon as practicable after receipt and in any event within three working days of receiving a Request for Information;

34.5.2 provide all such assistance as may be required from time to time by the other and supply such data or information as may be properly requested by the other;

34.5.3 provide the other with any data or information in its possession or power in the form that the other properly requires within five

working days (or such other longer period as the other may specify) of the other requesting that Information;

34.5.4 ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure; and

34.5.5 permit the other to inspect all records retained in accordance with clause 34.5.4 as requested from time to time.

34.6 Nothing in this Agreement will prevent either Party from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information.

35. **NOTICES**

Any notice required to be given under this Agreement must be given in writing. Any notice to the Agency must be served upon Judith Roberts, Head of Legal, Homes and Communities Agency, Central Business Exchange II, 406-414 Midsummer Boulevard, Milton Keynes MK9 2EA or to such other person and address as may be notified by the Agency to the Council in writing from time to time. Any notice to the Council must be sent to Lisa Dixon, Head of Legal and Support Services, Town Hall, St Nicholas Street, Scarborough, YO11 2HG or to such other person and address as may be notified by the Council to the Agency in writing from time to time. All notices must be delivered by one of the following means and are to be considered as given or delivered:-

By hand - on the day of delivery if delivered before 5pm or otherwise on the next Working Day

By recorded first class post - two Working Days after posting

36. **ANNOUNCEMENTS**

No announcement, circular, advertisement or other publicity in connection with this Agreement, its subject matter or any ancillary matter will be made or issued by any Party to this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed). Provided That no such consent will be required for the display or issue of any statutory notices required.

37. **ASSIGNMENT**

Save as specified in **clause 27** neither Party may assign the benefit (including any present, future or contingent interest or right to any sums or damages payable by either Party under or in connection with this Agreement) or delegate the burden of this Agreement or otherwise sub-contract, mortgage, charge or otherwise transfer or hold on trust any or all of its rights and obligations under this Agreement without the prior written consent of the other Party.

38. **ENTIRE AGREEMENT**

38.1 This Agreement and the Constitution contain all the terms which the Parties have agreed in relation to their respective subject matters and supersede any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matters.

38.2 Nothing in this **clause 38** will exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

39. **VARIATIONS**

This Agreement may only be varied or amended in writing and signed by a duly authorised officer of each of the Parties.

40. **WAIVER**

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

41. **TUPE**

41.1 The Parties are entering into this joint venture agreement on the understanding that the TUPE Regulations will not apply on any Council Activity Cessation Date so as to transfer the employment of any Council Employee to the Joint Venture or the Agency.

41.2 Where, notwithstanding clause 41.1 above, the TUPE Regulations do apply or are alleged to apply, or are found by any court to have applied, so to transfer the Employment of any Council Employee to the Joint Venture or the Agency on any Council Activity Cessation Date, the Council shall indemnify the Agency in full in relation to any and all Direct Losses arising as a result of any Employee Claims, including for the avoidance of doubt any Employee Claims relating to the termination of employment of any Council Employee by the Parties.

42. **GOVERNING LAW AND JURISDICTION**

42.1 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement will be governed by the law of England and Wales.

42.2 The courts of England and Wales will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement. The Parties irrevocably agree to submit to that jurisdiction.

IN WITNESS WHEREOF the Parties have executed this document as a deed on the date stated at the beginning of this Agreement.

SCHEDULE 1

Development Costs

“Development Costs” means the total of all Costs of whatsoever nature incurred by or on behalf of the Agency or the Council after the date hereof in respect of procuring development of the Site in accordance with the Objectives and the terms of this Agreement and Disposal of the same including without limitation the following:

Organisational Costs

- (a) the Costs of establishing and running the Project Board and the Delivery Team, including the costs of any fully dedicated staff resources from time to time appointed by the Parties with the agreement of the Project Board.

Projects Costs

- (a) all Costs in connection with preparation of any masterplan and any other inspections investigations or surveys (whether geotechnical environmental or otherwise) carried out or reports prepared in relation to the Site
- (b) all Costs relating to the design of preparation for and carrying out of any marketing events and public relations in connection with promoting the Site
- (c) all Costs of obtaining and complying with all planning permissions public or private approvals consents licences and agreements required to enable or facilitate such development or Disposal, including without limitation the costs of providing and diverting any services and alterations whether external or internal
- (d) all Costs of any professional or other advisers (including without limitation legal advisers and surveyors) in connection with implementation of this Agreement
- (e) the Costs of setting-up any management company
- (f) the costs of implementation of and (if incurred after the 31 December 2012) the cost of preparing and agreeing the Core Strategies

Land Costs

- (a) Acquisition Costs and all Costs relating to CPO (save for any costs incurred by the Council in complying with clause 12.3)
- (b) all Costs relating to extinguishing varying or satisfying adverse rights which would or may impede such development or Disposal or the use funding management or insurance of the same
- (c) All Costs of any adoption or acquisition of any interest in order to facilitate any such development or Disposal (save for any costs incurred by the Council in complying with clause 12.3)

- (d) all payments made by any seller or lessor to any buyer in lieu of a rent free period or as a contribution to fitting out or other works to be carried out by a buyer or lessee or otherwise as an incentive to any buyer or lessee to buy or lease
- (e) the capital value of any rent free or rent reduced period or other incentive to buy or lease allowed by a seller or lessor to any buyer or tenant
- (f) management and holding Costs
- (g) any reclamation or remediation works procured hereunder
- (g) the Costs of providing any infrastructure or services or utilities for the purpose of implementing the Development Brief

Other Costs

- (a) all irrecoverable VAT
- (b) such other Costs as in the circumstances ought properly and fairly to be treated as part of Development Costs
- (c) the Costs of any Independent Third Party as described in Clause 24.
- (d) (without limiting the generality of the beginning of this definition) other Costs which the Parties agree by JV Decision referring to this paragraph of this Schedule shall be treated as Development Costs
- (e) the costs of obtaining consents and licences to facilitate the development pursuant to this Agreement

BUT SO THAT Development Costs shall not include

- (i) (unless expressly agreed by JV Decision) internal staff Costs and management and administration Costs of each Party
- (ii) any Costs funded or otherwise reimbursed by grants of public sector funding

SCHEDULE 2

Sales following a Deadlock Situation

1. Defined terms

In this Schedule the following words and expressions have the following meanings:

"Appointed Agents" the agents appointed in accordance with **paragraph 2**

"Recommendation Notice" a notice served by the Appointed Agents in accordance with **paragraph 3.3**

2. Appointment of agents

2.1 The Parties are to appoint a suitable firm of chartered surveyors for the sale of the Site and any other Joint Venture assets. The chartered surveyors are to be experienced in the sale of similar assets and their identify agreed upon by the Parties within ten Working Days of a request by either Party to do so.

2.2 If the Parties are unable to agree the appointment of a firm of chartered surveyors, the chartered surveyors may be appointed at the request of either Party by the President of the Royal Institution of Chartered Surveyors.

3. Role of the Appointed Agents

3.1 The Appointed Agents are to seek offers for the Site and other assets of the Joint Venture, or if appropriate the relevant part or parts of the Site, at its Open Market Value and in a manner which will satisfy the Best Consideration Requirements.

3.2 On the sale of a relevant part of the Site, the Appointed Agents are to seek offers for the Site with such rights easements and infrastructure that the Appointed Agents consider appropriate to preserve the value of both the relevant part of the Site being sold and the remainder of the Site that is not being sold.

3.3 The Parties will be bound by the most appropriate offer recommended to them by the Appointed Agents (to the extent that it satisfies the Best Consideration Requirements) by formal notice served on them by the Appointed Agents specifying that it is a recommendation pursuant to this **paragraph 3.3**. The notice is to state the sale price and the other principal terms recommended by them for the sale.

3.4 The Appointed Agents are to make recommendation in the Recommendation Notice as experts and their decision is to be final and binding on the Parties (to the extent that it satisfies the Best Consideration Requirements).

3.5 The Appointed Agents may recommend that the Site be sold as a whole or in parts.

3.6 The Appointed Agents are to continue to endeavour to sell the whole of the Property and assets of the Joint Venture or the relevant part or parts of the Property, as the case may be, until it is sold.

4. **Sale of the Property**

4.1 (Subject to being in accordance with the Best Consideration Requirements) The Parties are to procure that a sale is effected pursuant to the Recommendation Notice as quickly and effectively as possible in accordance with the Recommendation Notice, but with such variations as may be reasonably necessary to conclude such sale unless the Appointed Agents state in writing on the application by either Party that the terms of the sale as so varied are no longer recommended by them.

4.2 The Site, or the relevant part of the Site, is to be sold with such rights and easements over other land of which the Site has the benefit and, on the sale of a relevant part of the Site, together with and subject to such rights, easements and infrastructure over the remainder of the Site as are recommended by the Appointed Agents as being necessary or desirable to enhance the value of the Site or the part that is being sold whilst preserving the value of the remainder of the Site.

4.3 The net proceeds of any sale under this Schedule are to be paid into the Development Account and are to be applied as Income as specified in **clause 15** after the deduction and payment of all sale costs and disbursements.

4.4 Any sale pursuant to this Schedule is to be effected without prejudice to the rights of either Party against the other in respect of any antecedent breach of this Agreement.

SCHEDULE 3

Milestones

Milestone Reference	Milestone	Applicable Milestone Date
(i)	Agree Heads of Terms for Joint Venture Partnership Agreement	March 2012
(ii)	SBC cabinet approval	March 2012
(iii)	Complete Joint Venture / Partnership Agreement	March 2012
(iv)	HCA funds (c. £3.25m) transferred to SBC	March 2012
(v)	Finalise public consultation of Development Brief	30 June 2012
(vi)	Development Brief formally adopted as supplementary planning guidance (with any applicable challenge period having passed without successful challenge)	30 September 2012
(vii)	Set up Project Board and Delivery Team in accordance with the terms of this Agreement	April / May 2012
(viii)	(i) The Constitution of the Project Board has been agreed between the Parties and adopted, in each case in accordance with the terms of clause 6.9.2; and (ii) The protocol referred to in clause 6.9.2 has been agreed in accordance with the terms of clause 6.9.2.	June 2012
(ix)	The Core Strategies have been substantially progressed in accordance with the terms of this Agreement.	June / July 2012
(x)	(i) The Development Account has been set up in accordance with the terms of clause 16 of this Agreement; and (ii) The Council has complied with its obligations under clause 15.6.1 of this Agreement.	31 December 2012
(xi)	Commence implementation of the Procurement Strategy (with third party consultants instructed where necessary)	December 2012
(xii)	The Council has complied with its obligations under clause 15.6.2 of this Agreement	1 April 2013
(xiii)	The Vacant Possession Event has occurred in accordance with the terms of this Agreement.	30 September 2013
(xiv)	Developer selected and development agreement signed	1 January 2014
(xv)	Vacant possession of remainder of the Site has been obtained.	1 January 2014
(xvii)	Start on Site on works in accordance with the Core Strategies and a development agreement entered into in accordance with the terms of this Agreement.	2014/15
(xviii)	Disposal of the entirety of the Site in accordance with the terms of this Agreement with all distributions under clauses 15 and 16 of this Agreement having been made.	2016/17 (est.)
(xix)	The Council having acquired a freehold or leasehold interest in a relocation site for its Town Hall function.	31 January 2013

SCHEDULE 4

Pre-emption

Part 1: Right of pre-emption

1. **Definitions and Interpretation**

1.1 In this Schedule, reference to the Council and the Agency include their respective successors in title.

2. **Pre-emption Procedure**

2.1 On service of a Pre-emption Notice (as defined in clause 20.5) the Parties shall appoint (within 5 working days of the date of the Pre-emption Notice) a suitable firm of chartered surveyors ("Pre-emption Surveyors") (owing a duty of care to each of the Agency and the Council) to provide an opinion as to the Open Market Value in relation to that part of the Site which, but for the operation of this Schedule 4, would be subject to the terms of Schedule 2 (such part of the Site being referred to as "the Pre-emption Land").

2.2 The Pre-emption Surveyors shall be instructed to carry out valuations of the Pre-emption Land and in particular:

2.2.1 a valuation of the Open Market Value of the Pre-emption Land on the basis that the whole of the Pre-emption Land is sold as a single piece of property ("Pre-emption Land Value"); and

2.2.2 a valuation of the Open Market Value of that part of the Pre-emption Land that falls within the Upper Tier Site (if any) ("Upper Tier Pre-emption Land") on the basis that such parcel is sold as a single piece of property ("Upper Tier Value"); and

2.2.3 a valuation of the Open Market Value of that part of the Pre-emption Land that falls within the Lower Tier Site (if any) ("Lower Tier Pre-emption Land") on the basis that such parcel is sold as a single piece of property ("Lower Tier Value"); and

2.2.4 a valuation of the Open Market Value of the entirety of the Pre-emption Land on such basis of disposal (whether as a whole or in separate parts) as the Pre-emption Surveyors regard as likely to achieve the highest total Open Market Value for the entirety of the Pre-emption Land ("Optimum OMV")

together referred to in this Schedule as the "**Valuations**".

Such instruction must request that the Pre-emption Surveyors provide such valuations as soon as reasonably practicable and in any event within 20 Working Days of the date of instruction of the Pre-emption Surveyors.

2.3 Each Party shall within 10 Working Days of the date of the issue of the Valuations pursuant to clause 2.2 by the Pre-emption Surveyors serve notice in writing on the other Party stipulating whether or not they agree with the Valuations.

- 2.4 If either Party serves notice in accordance with paragraph 2.3 stipulating that it disagrees with the Valuations (or any part of them) obtained pursuant to the terms of paragraph 2.2 then the matter may be referred by either party to resolution by an independent expert in accordance with clause 24 and the findings of such expert shall bind the Parties.
- 2.5 If any Party fails to serve notice in accordance with paragraph 2.3 then it shall be deemed to have agreed the Valuation.
- 2.6 The Valuations as agreed, deemed agreed or determined in accordance with this Schedule shall be referred to as the Agreed Valuations and the Pre-emption Land Value, Upper Tier Value, Lower Tier Value and the Optimum OMV as agreed, deemed agreed or determined as part of the Agreed Valuations under this Schedule shall be referred to as the Agreed Pre-emption Land Value, the Agreed Upper Tier Value, the Agreed Lower Tier Value and the Agreed Optimum Value.
- 2.7 The Council shall have a period of 10 working days from the date of agreement, deemed agreement or determination of the Valuations pursuant to the Pre-emption Value in accordance with this paragraph 2 to stipulate, by serving written notice ("Final Notice") in writing upon the Agency, whether or not it wishes to:

- 2.7.1 Retain ownership of the Upper Tier Pre-emption Land; or
 - 2.7.2 Retain ownership of the Upper Tier Pre-emption Land, and retain ownership of those parts of the Lower Tier Pre-emption Land in Council ownership as at the date of the Pre-emption Notice (as defined in clause 20.5), and acquire ownership of those parts of the Lower Tier Pre-emption Land as are not within the ownership of the Council as at the date of the relevant Pre-emption Notice (as defined in clause 20.5); or
 - 2.7.3 Retain ownership of those parts of the Lower Tier Pre-emption Land in Council ownership as at the date of the Pre-emption Notice (as defined in clause 20.5), and acquire ownership of those parts of the Lower Tier Pre-emption Land as are not within the ownership of the Council as at the date of the Pre-emption Notice (as defined in clause 20.5).
- 2.8 If the Council serves a "Final Notice" (pursuant to clause 2.7.2) which stipulates that the Council wishes to Retain ownership of the Upper Tier Pre-emption Land, and retain ownership of those parts of the Lower Tier Pre-emption Land in Council ownership as at the date of the Pre-emption Notice (as defined in clause 20.5), and acquire ownership of those parts of the Lower Tier Pre-emption Land as are not within the ownership of the Council as at the date of the Pre-emption Notice (as defined in clause 20.5) then:
- 2.8.1 The parties shall agree a fair and reasonable calculation (referred to in this paragraph 2.8 as the "Apportionment") of how the Agreed Optimum OMV should be apportioned between those parts of the Pre-emption Land which are within the ownership of the Agency and those which are within the ownership of the Council (taking into account a fair proportion of any marriage value) and if the Parties do not agree such Apportionment within 10 working days of the date of service of the relevant Final Notice then the Parties shall refer the matter to determination by an Independent Third Party in accordance with clause 24; and
 - 2.8.2 (within 5 working days of agreement or determination of the Apportionment pursuant to paragraph 2.8.1 above) the Council shall immediately pay into the Development Account an amount equivalent to the Agreed Optimum OMV and such amount shall be treated and distributed as Income in accordance with the terms of clauses 15 and 16; and
 - 2.8.3 (within 5 working days of agreement or determination of the Apportionment pursuant to paragraph 2.8.1) the Agency will sell and the Council will buy those parts of the Pre-emption Land which are in ownership of the Agency (and the purchase price attributable to such acquisition shall be in accordance with the Apportionment) such sale and purchase to be in accordance with Part 2 of this Schedule; and

- 2.8.4 the Parties will do all things necessary to ensure that the service of the Final Notice in accordance with this paragraph 2.8 constitutes an enforceable agreement for sale and purchase in accordance with section 2 Law of Property (Miscellaneous Provisions) Act 1989; and
 - 2.8.5 the provisions of Schedule 2 shall no longer apply.
- 2.9 If the Council serves a "Final Notice" (pursuant to clause 2.6.1) which stipulates that the Council wishes to retain ownership of the Upper Tier Pre-emption Land then:
- 2.9.1 the Council shall immediately pay into the Development Account an amount equivalent to the Agreed Upper Tier Value and such amount shall be treated and distributed as Income in accordance with the terms of clauses 15 and 16; and
 - 2.9.2 the remainder of the Site (other than the Upper Tier Pre-emption Land) shall be sold in accordance with the terms of Schedule 2; and
 - 2.9.3 in the event that upon disposal of the remainder of the Site (other than the Upper Tier Pre-emption Land) the total Sale Proceeds for the entirety of the Pre-emption Land is less than the Agreed Optimum OMV (in circumstances where the basis of valuation of the Agreed Optimum OMV did not envisage the Upper Tier Pre-emption Land being sold as a separate parcel of property) the Council shall, within 10 Working Days of the final disposal of the Site, pay an amount equivalent to such deficit into the Development Account and such amount shall be treated and distributed as Income in accordance with the terms of clauses 15 and 16; and
- 2.10 If the Council serves a "Final Notice" which stipulates that the Council wishes to retain ownership of those parts of the Lower Tier Pre-emption Land in Council ownership as at the date of the Pre-emption Notice (as defined in clause 20.5), and acquire ownership of those parts of the Lower Tier Pre-emption Land as are not within the ownership of the Council as at the date of the Pre-emption Notice (as defined in clause 20.5), (pursuant to clause 2.6.3) then:
- 2.10.1 The parties shall agree a fair and reasonable calculation (referred to in this paragraph 2.10 as the "Apportionment") of how the Agreed Lower Tier Value should be apportioned between those parts of the Lower Tier pre-emption Land which are within the ownership of the Agency and those which are within the ownership of the Council (taking into account a fair proportion of any marriage value) and if the Parties do not agree such Apportionment within 10 Working Days of the date of service of the relevant Final Notice then the Parties shall refer the matter to determination by an Independent Third Party in accordance with clause 24; and

- 2.10.2 (within 5 working days of agreement or determination of the Apportionment pursuant to paragraph 2.10.1 above) the Council shall immediately pay into the Development Account an amount equivalent to the Agreed Lower Tier Value and such amount shall be treated and distributed as Income in accordance with the terms of clauses 15 and 16; and
- 2.10.3 (within 5 working days of agreement or determination of the Apportionment pursuant to paragraph 2.10.1) the Agency will sell and the Council will buy those parts of the Lower Tier Pre-emption Land which are in ownership of the Agency (and the purchase price attributable to such acquisition shall be in accordance with the Apportionment) such sale and purchase to be in accordance with Part 2 of this Schedule; and
- 2.10.4 the Parties will do all things necessary to ensure that the service of the Final Notice in accordance with this paragraph 2.10 constitutes an enforceable agreement for sale and purchase in accordance with section 2 Law of Property (Miscellaneous Provisions) Act 1989;
- 2.10.5 in the event that upon disposal of the remainder of the Site (other than the Lower Tier Pre-emption Land) the total Sale Proceeds for the entirety of the Pre-emption Land is less than the Agreed Optimum OMV (in circumstances where the basis of valuation of the Agreed Optimum OMV did not envisage the Lower Tier Pre-emption Land being sold as a separate parcel of property) the Council shall, within 10 Working Days of the final disposal of the Site, pay an amount equivalent to such deficit into the Development Account and such amount shall be treated and distributed as Income in accordance with the terms of clauses 15 and 16; and
- 2.11 If the Council fails to serve a Final Notice in accordance with the terms of paragraphs 2.7 to 2.10 (including without limitation within the timescales set out therein time being of the essence) then the provisions of this Schedule 4 will cease to apply and the provisions of Schedule 2 will apply to the entirety of the Site (save in relation to any part which is the subject of any Existing Commitment).
- 2.12 If the Council serves a Final Notice in accordance with the terms of paragraph 2.7 (including without limitation within the timescales set out therein time being of the essence) stipulating that it does wish to retain or acquire any of the Pre-emption Land then the provisions of this Schedule 4 will cease to apply and the provisions of Schedule 2 will apply to the entirety of the Site (save in relation to any part which is the subject of any Existing Commitment).

Part 2

Other Terms of sale and purchase pursuant to Part 1 of this Schedule

1. Any transfer of property by the Agency to the Council pursuant to Part 1 of this Schedule shall:

1.1 be with limited title guarantee; and

1.2 the Standard Commercial Property Conditions (Second Edition) shall apply so far as consistent with the express terms of this Agreement

EXECUTED (but not delivered until the)
date hereof) **AS A DEED** by affixing)
THE COMMON SEAL of)
HOMES AND COMMUNITIES AGENCY)
in the presence of:-)

.....
Authorised Signatory

THE COMMON SEAL of)
SCARBOROUGH BOROUGH COUNCIL)
was hereunto)
affixed in the presence of:-)

.....
Authorised Signatory

APPENDIX 1

Development Brief