DATED 2020

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL

and

[DEVELOPER]

[GUARANTOR]

DEVELOPMENT AGREEMENT

and

AGREEMENT FOR LEASE

relating to development of Whitecliff Pavilion,
Whitecliff Road,
Poole, BH14 8DB

THIS AGREEMENT made the day of 2020

B E T W E E N:

(1) **BOURNEMOUTH**, **CHRISTCHURCH AND POOLE COUNCIL** of Town Hall, Bourne Avenue, Bournemouth, BH2 6DY (the **"Council"**).

(2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** OR [**INDIVIDUAL NAME]** of [**INDIVIDUAL ADDRESS**] (the **"Developer"**).

(3) [GUARANTOR] (**the Guarantor**).[1]

Background

1. BACKGROUND

(A) The Council owns the Property and wishes to ensure the provision of enhanced facilities for Whitecliff recreation ground by securing the improvement of the Building in line with an outline planning permission APP/17/01146/P dated 3rd October 2017 (the "Outline Consent").

(B) The Council has agreed to appoint the Developer to procure the carrying out of the Development upon the terms and in return for the payments set out in this Agreement.

(C) Upon practical completion of the Development the Council intends to grant and the developer intends to take a lease of part of the Building and to enter into a Property Management Agreement in respect of the Community Facilities.

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement the following terms have the following meanings:

Accessway: the approved route to and from the Site as shown [coloured] on the Plan;

Agreed Completion Date: [31 October 2020] or such later date as may be substituted in accordance with clause [13];

Approved Documents: all plans, specifications, drawings, engineering calculations, bills of quantity and other data that may be required in connection with the Development including (where applicable any minor variations permitted under clause [4.])

Architect: the architect appointed by the Developer in relation to the Development, or such other architect as the Council may approve;

[1] A guarantor may be required.

Booking System: a system for the management of the bookings of the sports pitches at Whitecliff Recreation Ground**;**

Building: Whitecliff Pavilion, Whitecliff Recreation Ground**;**

Building Contract: a building contract for the construction of the Works on the Property and ancillary works based upon the [JCT Minor Works Building Contract 2016] OR [JCT Intermediate form of Building Contract 2016][2] with such amendments as many be approved by the Council;

Building Contractor: each building contractor appointed under the Building Contract [NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS], or such other reputable contractor as may be appointed as a replacement building contractor for the time being by the Developer, with the approval of the Owner;

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

Certificate of Practical Completion: the [Architect's OR Contract Administrator's OR Employer's Agent's] certificate or written statement issued in accordance with the Building Contract certifying that the Development is practically complete according to the terms of the Building Contract;

Client: the client as defined by the CDM Regulations;

Collateral Warranty: a deed of warranty between the Council and the Building Contractor or the appropriate member of the Professional Team or Principal Sub-contractor (as the context requires) substantially in the form set out at Schedule 4 with such amendments as may be approved by the Council provided that the Council shall not unreasonably withhold its consent to amendments required as a condition of cover by any insurer of the Building Contractor or the relevant member of the Professional Team and which are (in the Council's opinion acting reasonably) in line with normal market practices for a scheme equivalent to the Works);

Community Facilities: the public toilets and changing rooms as described in [paragraph 2 of Schedule 1];

Community Facility Works: the works undertaken to refurbish or replace the Community Facilities which will form part of the Building;

Community Benefit Works: such other Works as the Council may approve in accordance with clause [16] that enhance the Property for the benefit of the public using Whitecliff Recreation Ground;

[2] The form of contract required will be determined by the estimated value of the construction works.

Council's Contribution: the Council's contribution in the sum of one hundred thousand pounds (£100,000.00);

Council's Representative: the Director of Environment or such other person as is notified in writing to the Developer by him or on his behalf to carry out the Council's Representative's functions hereunder;

Defects Liability Period: the defects liability period or rectification period for the making good of defects, shrinkages or other faults in the Works under the Building Contract and which period shall be no shorter than 12 months from the Practical Completion Date;

Development: the carrying out of the Works on the Property in accordance with the Planning Permission;

Development Commencement Date: [ ];

Development Period: the period from and including the date of this Agreement and ending on the Practical Completion Date;

Employer's Agent: [NAME] and [ADDRESS] or such other person as may be appointed as a replacement employer's agent for the time being by the Developer, with the approval of the Owner, in relation to this agreement and the Building Contract];

Expert: the person appointed to act under Schedule 3;

Fields in Trust: The National Playing Fields Association (charity number 306070) whose registered address is at Woodstock Studios, 36 Woodstock Grove, LONDON, W12 8LE;

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and codes of practice issued by the Information Commissioner in relation to such legislation;

Health and Safety File: the health and safety file required by the CDM Regulations;

Health and Safety Plan: the health and safety plan required by the CDM Regulations;

Implementation Plan: the timetable relating to the commencement of services pursuant to the Property Management Agreement as set out in Schedule [ ];

Information: has the meaning given under section 84 of FOIA;

Lease: the lease of the Property to be granted to the Developer on the Lease Completion Date, substantially in the form attached at Schedule 6 subject only to minor amendments necessitated by any variations to the specification and the Planning Permission;

Lease Completion Date: the date 10 Working Days after the Practical Completion Date;

Liaison Manager: the person appointed full-time by the Building Contractor to carry out the functions detailed in clause 9;

Licence: the licence granted in clause [6.1];

Longstop Date: [ ] [3];

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budges and any other materials provided in connection with the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works;

Mechanical & Electrical Engineer: [details] or such other person appointed by the Developer with the Council's approval;

Parties: the Council and the Developer, and their permitted successors in title and **Party** means such one of them as the context requires;

Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, and repair of the Works[4]

Plan 1: the plan attached to this Agreement and so numbered;

Plan 2: the plan attached to this Agreement and so numbered;

Planning Obligation: a statutory obligation that is necessary for or assists in the carrying out of the Development including (without limitation) an obligation under section 106 of the Town and Country Planning Act 1990, section 38 or 278 of the Highways Act 1980 or section 104 of the Water Industry Act 1991;

Planning Permission: the outline planning permission dated 3 October 2017 from BCP under reference APP/17/01146/P as varied by APP/18/01105/F dated [ ]**;**

Practical Completion Date: the date stated in the Certificate of Practical Completion;

Pre-Construction Tasks: the tasks to be carried out to prepare the Site for the construction phase, as set out in Schedule 2;

Principal Designer: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement for the time being by the Developer, with the approval of the Council, to be the principal designer for the purposes of the Development and the CDM Regulations.

Professional Appointment: the appointment of a member of the Professional Team.

Professional Team: the Architect] [, the Principal Designer] [, the Quantity Surveyor] [, the Contract Administrator] [, the Employer's Agent] [, the Structural Engineer] [, the M&E Engineer] and any other specialist advisors or sub-consultants that may, with the approval of the Council, be appointed for the time being in connection with the design or management of the Development

[3] Six months after the agreed completion date.
[4] This will be amended depending on the tender details.

The Property: the land and building known as Whitecliff Pavilion as shown edged red on Plan 1;

Property Management Agreement: an agreement for the management of the Community Facilities and the operation of the sports pitches booking, substantially in the form attached at Schedule [7,] subject only to minor amendments necessitated by any variations to the Specification and the Planning Permission;

Quantity Surveyor: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement quantity surveyor for the time being by the Developer [or Building Contractor], with the approval of the Owner, in relation to this agreement [and the Building Contract].

Requests for Information: shall have the meaning set out in FOIA or any apparent request for information under FOIA or the Environmental Information Regulations 2004;

Requisite Consents: the Reserved Matters, building regulation consents, by-law approvals, party wall awards, rights of light agreements, oversail licences and any other consents, licences and authorisations required from any competent authority, statutory undertaker or person either for the carrying out of the Development or for its intended use;

Reserved Matters: all matters remaining to be approved under the terms of the Planning Permission;

Schedule of Condition: the photographic and descriptive schedule illustrating the condition of the Working Area and the Temporary Facilities Area signed by the Parties and annexed to this Agreement;

Services: the services serving the Property for drainage, gas, electricity, water, telephone and televisual services;

Site: means the Property, the Temporary Facilities Area and the Working Area as shown edged [ ] on Plan 1;

Specification: the specification for the carrying out of the Works in accordance with the Planning Permission and the Building Contract [draft attached at Schedule 1?];

The Standard Conditions: the Standard Commercial Property Conditions (3rd Edition), and reference to a particular Standard Condition means the Standard Condition with that number;

Structural Engineer: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement structural engineer for the time being by the Developer [or the Building Contractor], with the approval of the Owner, in relation to this agreement [and the Building Contract].

Temporary Changing Facilities: four temporary changing room units, each suitable for use by up to 14 people plus a changing room suitable for use by officials, all with interior lighting.

Temporary Facilities Area: the area adjacent to the Property which is being made available to the Developer during the Development Period for the purposes as described in clause [13];

Temporary Public Conveniences: no fewer than 2 temporary public conveniences, including one suitable for use by disabled persons;

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

Working Area: the area adjacent to the Property which is being made available for use by the Developer's contractors during the Development Period and which is shown coloured [ ] on Plan 1;

Working Day: any day that is not a Saturday, Sunday, bank holiday or public holiday in England;

Works: the works to be carried out to design and construct on the Property a sports pavilion, incorporating a café area and Community Facilities as described in the Building Contract and the Approved Documents; and ancillary works on the Property;

2.2 References to the consent or approval of the Council or the Council's Representative, however expressed, mean the previous written consent or approval (not to be unreasonably withheld or delayed).

2.3 References to a clause, schedule or paragraph are unless otherwise stated to the clause, schedule or paragraph so-numbered in this Agreement.

2.4 The clause and paragraph headings in this Agreement are for ease of reference only and are not to be taken into account in its interpretation.

2.5 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

2.6 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.

2.7 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

2.8 Words importing the singular where the context allows include the plural and vice versa and words of one gender include all other genders.

2.9 A reference to a statute or statutory provision or subordinate legislation is a reference to it as amended, extended or re-enacted from time to time.

2.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

2.11 An obligation not to do something includes an obligation not to permit or suffer it to be done.

3. CONSIDERATION

In accordance with the terms of this Agreement the Developer agrees to procure the carrying out of the Works and the completion of the Development by the Agreed Completion Date in consideration of which the Council agrees to pay the Council's Contribution in accordance with clause [16].

4. PRE-CONSTRUCTION APPROVALS

4.1 Within 20 working days from the date of this Agreement the Developer shall submit to the Council the Approved Documents for approval, taking account of the design parameters set out in Schedule 1.

4.2 Within 10 working days after the Council has received the Approved Documents, the Council shall give notice to the Developer that the Council either approves or disapproves of the Approved Documents PROVIDED THAT failure by the Council to respond within the time specified shall not be deemed to be approval of the Approved Documents.

4.3 If the Council does not approve the proposed Approved Documents, the Developer shall submit a revised set of Approved Documents to the Council for approval within 10 working days of receipt of the notice under clause [4.2.] The procedure set out in *Clause [4.1]* shall apply to any revised submission as if it were the first submission. The Developer shall continue to submit revised applications to the Council for approval until an application is approved by the Council.

4.4 Following approval pursuant to clause [4.1] the Developer shall not vary, alter, add or remove anything from the Approved Documents without the Council's consent.

4.5 Within 5 working days of confirming to the Developer that the documents are approved in accordance with clause [4.1] the Council shall submit the Approved Documents to Fields in Trust.

5. REQUISITE CONSENTS

5.1 The Developer shall apply for and use all reasonable endeavours to obtain the Requisite Consents and will submit the application for the Reserved Matters to the Council as landowner as soon as is reasonably practicable and in any event within 5 working days of receipt of FIT approval of the Approved Documents.

5.2 The Council will within 10 Working Days of such submission notify the Developer in writing whether or not the Reserved Matters application is approved, and in default shall be deemed not to have approved it.

5.3 Once approved the Developer will submit the Reserved Matters application to the local planning authority at the earliest opportunity and in any event by 1 September 2020.[5]

5.4 The Developer will on submission of the Reserved Matters application proceed diligently and provide all necessary co-operation with the local planning authority in determination of the application and use reasonable endeavours to secure determination of the Reserved Matters by 2 January 2021.

5.5 The Developer will promptly start and proceed diligently with the Pre-construction Preparations as soon as the Requisite Consents have been obtained.

6. LICENCE FOR THE WORKS AND THE TEMPORARY FACILITIES AREA

6.1 The Council gives to the Developer for the duration of the Development Period a licence in accordance with the terms and conditions of this Agreement and subject to the payment of all costs relating to the Services[6] used at the Site throughout the Development Period to enter the Site to carry out and complete the Development and to erect any signage required for the commencement of the Development.

6.2 The Council gives to the Developer for the duration of the Development Period a licence in accordance with the terms and conditions of this Agreement to enter the Temporary Facilities

[5] This date has been set to ensure compliance with the current outline planning permission.
[6] The developer will become directly responsible for the Utility Costs relating to the Site from the date of occupation.

Area to install the Temporary Public Conveniences and the Temporary Changing Rooms and to operate them in accordance with the obligations in Schedule [ ]

6.2 The Developer shall also be entitled during the Development Period to carry out any soil or other investigations or surveys provided that any part of the Site which is damaged is made good to the Council's reasonable satisfaction and a copy of any reports prepared as a result are to be made available to the Council's Representative as soon as reasonably practicable.

6.3 The Developer shall also be entitled during the Development Period to use the Accessway for the purpose of access to and egress from the Site provided that any part of the Accessway which is damaged is made good to the Council's reasonable satisfaction.

6.4 The Developer shall procure that vehicular access to the Property for large goods vehicles (including deliveries) takes place only between 10am and 2pm daily (or, in each case, between such other hours as the Council may agree) with such large goods vehicles being directed to use Sherwood Avenue and Whitecliff Road only to access the Site.

6.5 The Developer shall commence the Works on or before the Development Commencement Date.

6.6 The Licence is subject to and with the benefit of all rights, easements, agreements, restrictions and other matters affecting the Site.

6.7 The Developer will not have any tenancy of or other interest in any part of the Site or the Temporary Facilities Area during or after the Development Period, and the Licence is subject to the proprietary rights of the Council and of all third parties.

7. PROFESSIONAL TEAM

7.1 The Developer confirms it has taken (or in the case of a substitute member of the Professional Team shall take) all reasonable steps to be reasonably satisfied that each member of the Professional Team is suitable and competent having regard to its responsibilities in relation to the Development, the Building Contract and the CDM Regulations.

7.2 The Developer shall liaise with the Principal Designer to allow the Principal Designer to assist the Developer in performing the Developer's duties as the Client under the CDM Regulations.

7.3 The Developer shall submit details of the proposed terms of the Professional Appointment of each member of the Professional Team to the Council for approval (such approval not to be unreasonably withheld or delayed) and shall supply certified copies of the actual terms of each Professional Appointment to the Council.

7.4 Subject to Clause [4.1], Clause [4.2] and Clause [4.3], the Developer shall appoint the members of the Professional Team as soon as they have obtained such of the Requisite Consents as are required to enable to Works to be commenced.

7.5 The Developer shall, upon the appointment of each member of the Professional Team, procure that it enters into a Collateral Warranty in favour of the Council.

7.6 The Developer shall procure that each member of the Professional Team grants to the Council an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by or on behalf of the relevant member of the Professional Team for any purpose relating to the Works including (without limitation) any of the Permitted Uses. Such licence shall:

7.6.1 carry the right to grant sub-licences and shall be transferable to third parties without the consent of the Developer or the relevant member of the Professional Team; and

7.6.2 provide that the relevant member of the Professional Team has no liability for use of the Material for any purpose other than that for which it was prepared and/or provided.

7.7 The Developer shall procure that the terms of the Professional Appointment of the [Architect OR Contract Administrator OR Employer's Agent] requires it to act impartially when exercising its power to issue certificates and award extensions of time under the Building Contract.

7.8 The Developer shall use all reasonable endeavours to procure that each member of the Professional Team performs and observes the terms of its Professional Appointment. The Developer agrees not to vary, waive or release any member of the Professional Team's

Professional Appointment without the Council's consent (such consent not to be unreasonably withheld or delayed).

7.9 The Developer shall not do or omit to do anything that would entitle any member of the Professional Team to regard its employment under its Professional Appointment as terminated. The Developer shall immediately notify the Council if the Developer believes that any member of the Professional Team may be intending to rescind its Professional Appointment.

7.10 The Developer shall not terminate the employment of any member of the Professional Team under its Professional Appointment or treat such Professional Appointment as repudiated without first notifying the Council of its intention to do so and discussing with the Council the appointment of a suitable substitute approved by the Council.

8 BUILDING CONTRACT

8.1 The Developer confirms it has taken (and in the case of a substitute Building Contractor shall take), all reasonable steps to be reasonably satisfied that the Building Contractor is suitable and competent having regard to its responsibilities in relation to the Development, the Building Contract and the CDM Regulations.

8.2 The Developer shall (subject to Clause 5.1) as soon as reasonably practicable enter into the Building Contract with the Building Contractor, appoint the Building Contractor as the principal contractor for the purposes of the CDM Regulations and supply a certified copy of the Building Contract to the Council.

8.3 The Developer shall, upon the appointment of the Building Contractor and each Design Sub-Contractor, procure that it enters into a Collateral Warranty in favour of the Council.

8.4 The Developer shall procure that the Building Contractor and each Design Sub-Contractor grants to the Council an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by or on behalf of the Building Contractor or the relevant Design Sub-Contractor for any purpose relating to the Works including (without limitation) any of the Permitted Uses. Such licence shall:

8.4.1 carry the right to grant sub-licences and shall be transferable to third parties without the consent of the Building Contractor or the relevant Design Sub-Contractor; and

8.4.2 provide the Building Contractor or the relevant Design Sub-Contractor has no liability for use of the Material for any purpose other than that for which it was prepared and/or provided.

8.4.3 The Developer shall use its reasonable endeavours to procure that the Building Contractor performs and observes the terms of the Building Contract. The Developer agrees not to vary, waive or release any of the terms of the Building Contract without the Council's consent (such consent not to be unreasonably withheld or delayed).

8.4.4 The Developer shall not do or omit to do anything that would entitle the Building Contractor to regard the Building Contract as terminated by breach. The Developer shall immediately notify the Council if the Developer believes the Building Contractor may be intending to rescind the Building Contract.

8.4.5 The Developer shall not terminate the employment of the Building Contractor or treat the Building Contract as repudiated without first notifying the Council of its intention to do so and discussing with the Council the appointment of a suitable substitute contractor approved by the Council.

9. DEVELOPER'S OBLIGATIONS

9.1 The Developer shall procure the completion of the Works by the Agreed Completion Date.

9.2 The Developer will procure that the Development is carried out:

9.2.1 in a good and workmanlike manner using only good quality suitable materials;

9.2.2 in accordance with this Agreement, the Building Contract, the Approved Documents, the Planning Permission, and all Requisite Consents;

9.2.3 in accordance with all statutory or other legal requirements and the recommendations or requirements of the local authority or statutory undertakings;

9.2.4 in compliance with all relevant British Standards, codes of practice, good building practice and the CDM Regulations;

9.2.5 in accordance with all covenants, stipulations, rights and conditions affecting the Property; and

9.2.6 by selecting and using materials so as to avoid hazards to the health and safety of any person and to ensure the long term integrity of the Building;

9.2.7 so that on the Practical Completion Date the Development shall be fit for its intended purpose as contemplated by the Planning Permission.

9.3 The Developer will ensure that external works take place only between 8am and 6pm daily or between such other hours as the Council may agree taking into account any conditions imposed in the Planning Permission .

9.4 The Developer will use all reasonable endeavours to ensure that during the Development Period:

9.4.1 no nuisance, damage or injury is caused to any person or property due to the carrying out of the Works;

9.4.2 any inconvenience or disturbance to adjoining or neighbouring owners, occupiers or members of the public is kept to the minimum;

9.4.3 the Property is secured at all times so as to prevent unauthorised entry so far as is possible;

9.4.4 no signs or advertisements are displayed on the Property without the Council's consent than those giving the names and roles of the Developer, the Building Contractor and the members of the Professional Team;

9.4.5 the Property is kept tidy and clear of rubbish and no goods or materials are deposited or stored on the Site which are not required within a reasonable time for the carrying out of the Works;

9.4.6 no soil, gravel or other minerals are removed from the Property except to the extent necessary for the carrying out of the Development;

9.4.7 suitable arrangements are made with the relevant authorities for the supply of water, electricity and other utilities to enable the carrying out of the Works;

9.4.8 the Building, whilst in the course of construction, is kept in good repair and condition;

9.4.9 on Practical Completion, the Works are left in a clean and tidy condition, with all unused materials and plant, equipment and temporary structures having been removed; and

9.4.10 the Working Area and the Temporary Facilities Area (if used) are reinstated at the Developer's Cost by the Council to the state of repair evidenced by the Schedule of Condition; and

9.4.11 the Council's Representative's reasonable instructions for the removal of valuable, historical or other items of interest found on the Property are observed.

9.5 The Developer will**:**

9.5.1 report at least once a month to the Council's Representative on the key dates and activities within the Works process, highlighting any delays and the measures being employed to overcome them;

9.5.2 without prejudice to paragraph (9.5.1) of this sub-clause promptly notify the Council's Representative of any material delays in the performance by the Building Contractor of its obligations under the Building Contract;

9.5.3 give at least ten working days' notice to the Council's Representative of all key milestone steering meetings to be held in connection with the progress of the Works and permit the Council's Representative to attend and make representations; and

9.5.4 promptly supply the Council's Representative at his request from time to time with a copy of all key reports, correspondence and other written materials relating to the Development which are required for any report to the Council.

9.5.5 The Developer will remove, repair or replace any materials or works relating to the Works which in the Council's Representative's reasonable opinion are not fully in accordance with the Building Contract or the Approved Documents within a reasonable period after receiving notice containing details of the relevant materials or works from the Council's Representative to do so.[7]

9.6 The Developer will procure that the following measures relating to noisy construction activity are complied with:

9.6.1 the Building Contractor will be required to comply with the recommendations in the Considerate Constructors Scheme (as published for the time being on the ccscheme.org.uk website);

9.6.2 the Building Contractor will be required to appoint the Liaison Manager to be responsible for negotiation and consultation with the Council's Representative;

9.6.3 [the Developer agrees that all piling operations will use an auger bore, with no driven piling (unless otherwise agreed between the parties acting reasonably);][8] and

9.6.4 without limiting the operation of this sub-clause the Developer agrees to stop or reduce noisy operations immediately as reasonably required if the noise produced by the Works constitutes a statutory nuisance as defined by any environmental health legislation.

9.7 From the date of service of the notification of Practical Completion pursuant to clause [14.1] the the Developer will comply with the obligations within the Implementation Plan.

9.8 The Council (subject to any applicable statutory restrictions) hereby consents to the Works and undertakes to enter into any party wall, crane over sailing and rights of light agreements which

[7] The Council is concerned to ensure that the level of investment and the quality of design and build set out in the successful tender are delivered.
[8] Depending upon the details within the tender.

the Developer requires from the Council as freehold owner of the Property in order to enable the carrying out of the Works in accordance with this Agreement on reasonable terms (including, but without limitation a suitable indemnity from the Developer to the Council without the payment of any fee or premium[9].

10. CDM Regulations

10.1 To the extent that the CDM Regulations apply in relation to the Works, the Developer agrees to be the only Client.

10.2 The Developer agrees to undertake all the obligations of a Client and to use it's best endeavours to ensure that the Works are carried out in accordance with the CDM Regulations.

10.3 Before commencement of the Works, the Developer shall notify the Works to the Health and Safety Executive in accordance with the CDM Regulations and shall give the Council a copy of the notification and any acknowledgement from the Health and Safety Executive.

10.4 The Developer will ensure that the Principal Designer and Building Contractor (as principal contractor and contractor) each comply with their respective obligations under the CDM Regulations.

10.5 The Developer will ensure that the CDM Co-ordinator and Building Contractor are both promptly:

10.5.1 supplied with all relevant information required under the CDM Regulations, and

10.5.2 notified of any changes relating to the Development which may have any effect on their responsibilities or duties under the CDM Regulations.

10.6 The Developer shall:

10.6.1 ensure that the Building Contractor prepares the Construction Phase Plan;

[9] Depending upon the details within the tender.

10.6.2 not allow the construction phase of the Works to commence until the Construction Phase Plan is prepared;

10.6.3 not allow the construction phase of the Works to commence until the site welfare facilities required by schedule 2 to the CDM Regulations are in place; and

10.6.4 ensure that the Health and Safety File is prepared by the Principal Designer and is maintained correctly and is available for inspection in accordance with the CDM Regulations.

10.7 The Developer will indemnify and keep the Council indemnified against any breach of the Developer's obligations under this clause.

11. INSPECTION

11.1 The Council and the Council's Representative may enter the Site, at any time during the Development Period, upon reasonable notice (once the Building Contract has been entered into) to the Developer and the Building Contractor, except in an emergency, to inspect progress of the Works and the materials used. In entering the Site, the Council and Council's Representative will not obstruct progress of the Works and will not give any instructions directly to the Building Contractor or Professional Team.

11.2 The Developer will use all reasonable endeavours to procure that any requirements, suggestions or complaints made by the Council or the Council's Representative in respect of the Works are given due and proper consideration and where appropriate promptly dealt with.

11.3 The Developer will regularly inspect or cause to be inspected the Development and use reasonable endeavours to procure that any defects, shrinkage or other faults that appear during the carrying out of the Works are promptly remedied.

12. INSURANCE

12.1 The Developer will procure that the Building Contractor, throughout the Development Period, keeps the Development in the course of construction, the ancillary works and all materials, plant

and equipment intended for use in the Development (whether or not situated on the Property) and any temporary structures situated on the Site and the Temporary Facilities are insured against:

12.1.1 all the risks specified in the Building Contract for their full reinstatement value;

12.1.2 site clearance and professional fees; and

12.1.3 third party and public liability risks.

In the event of the Building Contractor failing to keep such insurance in effect, the Developer will immediately effect such insurance itself, and will provide such evidence of having done so as the Council reasonably requests.

12.2 Provided that such insurance is available in the London insurance market at reasonable rates and subject to reasonable conditions and without prejudice to its obligations to indemnify the Council hereunder, the Developer shall effect and maintain:

12.2.1 employer's liability insurance in respect of the Developer's liability for death, personal injury or occupational disease of any person in the Developer's employment up to a limit of at least £10,000,000 for each event or series of connected events, with financial loss extension; and

12.2.2 public liability insurance in respect of the Developer's liability for loss or damage to property (including property of the Developer) against liability in respect of death, injury or occupational disease up to a limit of at least £10,000,000 for each event or series of connected events, with financial loss extension.

12.3 The Developer will arrange for the Developer's "contractor's all risks" insurance to be placed in the joint names of the Council, the Developer and the Building Contractor. The Developer will promptly supply copies of the insurance policies and also any relevant endorsement or endorsements to the Council's Representative together with a copy of the receipt for the premium once in every 12 month period.

12.4 In the event of the Development in the course of construction, the ancillary works or any materials, plant, equipment or temporary structures being destroyed or damaged by any risk against which the Developer has insured before Practical Completion, the Developer will apply all insurance monies received in respect thereof in the reinstatement or replacement including the removal and disposal of any debris and will procure that their reinstatement or replacement is carried out diligently and with all reasonable speed, PROVIDED THAT in the case of substantial or total destruction, the Developer shall not be obliged to provide identical accommodation, and shall be entitled subject to obtaining the Council's approval (not to be unreasonably withheld or delayed) to vary the nature thereof, having regard to the insurance monies received and the necessity to obtain further planning permission(s) or Requisite Consents.

12.5 If the Building Contractor and the Developer at any time fail to take out insurance in accordance with the provisions of this clause, the Council may in its absolute discretion take out such insurance itself and the Council's costs and expenses incurred in doing so shall be a debt owed by the Developer to the Council recoverable by action together.

12.6 The Developer will not knowingly do, omit to do or permit anything to be done that may render any insurance policy void or voidable.

13 EXTENSIONS OF TIME AND PROVISION OF ADDITIONAL FACILITIES

13.1 The Agreed Completion Date shall be extended:

13.1.1 commensurate with any extensions of time properly allowed by the [Architect **OR** Contract Administrator **OR** Employer's Agent] under the terms of the Building Contract, except where the delay is attributable to the fault of the Developer or any member of the Professional Team;

13.1.2 where completion of the Works is delayed due to an event which is beyond the control of the Developer except where such event is attributable to the fault of the Building Contractor, the Building Contractor's sub-contractors or any member of the Professional Team; and

13.1.3 in the event that the Council breaches the terms of this Agreement so as to delay the completion of the Works.

In any such event the parties shall procure that the Council's Representative impartially estimates a fair and reasonable extension of time and certifies the extension of time to which the Developer is entitled.

13.2 If the Agreed Completion Date is extended the Developer shall procure the installation of the Temporary Changing Facilities within the Temporary Facilities Area and shall make them available for use from the [ ][10] until the Community Facilities are made available in accordance with the Property Management Agreement.

14. Practical Completion

14.1 The Developer shall ensure that the Certificate is not issued without first giving the Council not less than ten Working Days' prior written notice of the date of the inspection held for the purpose of issuing it and allowing the Council to attend such inspection and make representations relating to the Certificate, and to use reasonable endeavours to comply with the Council's reasonable requirements relating to the Certificate.

14.2 The Developer will provide the Council's Representative with a copy of the Certificate as soon as reasonably practicable after its issue.

14.3 If the Council believes that the [Architect's **OR** Contract Administrator's **OR** Employer's Agent's] decision to issue a Certificate of Practical Completion is incorrect or that the certificate ought to have been qualified, the Council may notify the Developer within five Working Days giving details of the Council's objections. The Council and Developer shall use their reasonable endeavours to agree what action should be taken, but if they cannot agree then either party may refer the matters they have been unable to agree the Expert for determination in accordance with Schedule 3. The Developer shall take whatever action, if any, which may be agreed with the Council or is required by the Expert.

14.5 As soon as reasonably practicable after the issue of the Certificate, the Developer shall deliver copies of the Requisite Consents, the Health and Safety File, the Health and Safety Plan and two sets of as-built drawings for the Works, including in an electronic format, and will promptly

[10] From 1 year after the commencement of development/closure of current rooms.

take any other action reasonably required to enable the Council to use such documents without payment to any person.

14.6 The Council will grant and the Developer will accept the Lease on the Lease Completion Date.

15. DEFECTS LIABILITY

15.1 During the Defects Liability Period the Developer shall inspect or procure such inspections of the Works as are reasonably necessary or appropriate to identify any defects, shrinkages or other faults in the Works.

15.2 The Developer will prepare a list of all defects, shrinkage or other faults (incorporating any defects in relation to the Works notified to it by the Council's Representative) will give it to the Council and the Building Contractor within the time limits specified by the Building Contract.

15.3 The Developer will use all reasonable endeavours to ensure that the Building Contractor's obligations to remedy defects during the defects liability period are enforced and that all such defects are remedied promptly in accordance with the Building Contract.

16. PAYMENT OF COUNCIL'S CONTRIBUTION

16.1 Subject to the Developer carrying out and completing the Community Facility Works in accordance with this Agreement and receipt by the Council of a valid VAT invoice in respect of the VAT payable on the Council's Contribution, the Council shall, as a contribution to the Developer's expenditure on the Community Facility Works pay the Council's Contribution to the Developer in accordance with clause [16.3]

16.2 The Developer shall use the Council's Contribution only for the delivery of the Community Facilities and in accordance with the terms and conditions set out in this Agreement. Subject to Clause [16.3] the Council's Contribution shall not be used for any other purpose.

16.3 In the event that the Council's Contribution exceeds the cost to the Developer of carrying out the Community Facility Works then the Developer may apply such residual monies toward the Community Benefit Works.

16.3 The Council's Contribution will be paid by three instalments in arrears upon receipt of an invoice or invoices from the Developer as follows:

16.3.1 first instalment of £30,000 upon [ ][11]; and

16.3.2 second instalment of £30,000 upon [ ]; and

16.3.3 final instalment of £40,000 upon the Practical Completion Date.

16.4 For invoices to be accepted by the Council and for payment to be made to the Developer all invoices submitted must have supporting evidence of the costs incurred by the Developer from the Contractor, preferably the original invoices or certified copies of the original invoices.

16.5 No instalment shall be paid unless and until the Council is satisfied that such payment relates to proper expenditure incurred in the delivery of the Community Facility Works or the Community Benefit Works.

16.6 The Developer shall promptly repay to the Council any money incorrectly paid to it either as a result of an administrative error or otherwise.

17. WARRANTIES AND INDEMNITIES

17.1 The Developer warrants and undertakes that:

17.1.1 it has surveyed the Property and is satisfied that the Property is physically suitable for the Development;

17.1.2 on the Practical Completion Date the Development shall have been soundly constructed, free from defects and using materials and workmanship of the standard required by the Approved Documents and [*Clause 9.2.4]* and [*Clause 9.2.6]*;

17.1.3 on the Practical Completion Date the Development shall be fit for its intended purpose as contemplated by the Planning Permission; and

17.1.4 it has disclosed all material information related to insurance of the Development pursuant to *Clause [12*] (insurance) and such information is true and complete in all

[11] Triggers to be determined when project plan considered.

material respects.

17.2 The Developer shall indemnify the Council against all liabilities, costs, expenses, claims, damages, losses, demands, actions and proceedings suffered or incurred by the Council arising out of or in connection with any breach or negligent performance or non-performance of the Developer's obligations in this agreement including (but not limited to):

17.2.1 any claims for death, personal injury or damage to property;

17.2.2 any statutory or other liability for the safety or security of the Property, working methods, employment practices, protection of the environment and control of pollution; and

17.2.3 any claims for unlawful interference with any right of light, air, support, water, drainage or any other easement or right.

17.3 The Developer shall be released from all liability under this agreement after a period of 12 years after the Practical Completion Date, except in relation to any claim made against or notified to the Developer prior to the end of that period.

17.4 The Council will notify the Developer within 21 days of receiving notice of any matter for which the Developer is obliged to provide an indemnity hereunder.

17.5 The Council will not admit or settle any claim in respect of which the Developer is obliged to indemnify the Council without first notifying and giving proper and reasonable consideration to any representations made by the Developer.

17.6 The Developer's obligations under this Agreement do not limit the Council's rights or remedies against any person other than the Developer.

18. TERMINATION

18.1 Without affecting any other right or remedy available to it, the Council may terminate this agreement with immediate effect by giving notice to the Developer if any of the following events occur:

18.1.1 the Developer is in fundamental breach of any of its obligations in this agreement;

18.1.2 the Developer is in substantial breach of any of its obligations in this agreement and has failed to rectify the breach within a reasonable time after being notified in writing to do so; or

18.1.3 the Developer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];[12]

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

18.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Developer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Developer with one or more other companies or the solvent reconstruction of the Developer;

18.1.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Developer (being a company);

18.1.7 the holder of a qualifying floating charge over the assets of the Developer (being a company) has become entitled to appoint or has appointed an administrative receiver;

18.1.8 a person becomes entitled to appoint a receiver over the assets of the Developer or a

[12] Will be amended according to the circumstances.

receiver is appointed over the assets of the Developer;

18.1.9 [the Developer (being an individual) is the subject of a bankruptcy petition or order or makes an application for a bankruptcy order;]

18.1.10 a creditor or encumbrancer of the Developer attaches or takes possession of, or an execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Developer's assets and such attachment or process is not discharged within 14 Working Days;

18.1.11 any event occurs, or proceeding is taken, with respect to the Developer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in *Clause [18.1(c)* to *Clause 18.1(j)*](inclusive);

18.1.12 the Developer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

18.1.13 the Developer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;

18.1.14 the Developer (being a company) is struck off from the Register of Companies; or

18.1.15 the Developer otherwise ceases to exist.

18.2 Without affecting any other right or remedy available to it, if the Developer has not commenced the Works by the Development Commencement Date then the Council may terminate this Agreement with immediate effect by giving notice to the Developer at any time after the Development Commencement Date PROVIDED THAT the notice shall not be valid if served following commencement of the Works.

18.3 Without affecting any other right or remedy available to it, if the Practical Completion Date has not occurred by the Longstop Date then the Council may terminate this Agreement with immediate effect by giving notice to the Developer at any time after the Longstop Date, but before the Practical Completion Date has occurred PROVIDED THAT the notice shall not be

valid if served following the issue of the Certificate of Practical Completion.

19 CONSEQUENCES OF TERMINATION

If notice is served by the Council pursuant to *Clause [18.11* , clause [18.2] or clause [18.3]:

19.1 the Developer's licence to enter the Property shall immediately end;

19.2 the Council shall not be liable to make any further payments to the Developer under the terms of this agreement except sums which have fallen due for payment before the date of termination;

19.3 the Council may enforce its rights contained in the Collateral Warranties to substitute itself in the Developer's place in relation to the Building Contract and the appointments of the Professional Team; and

19.4 the Developer shall assign all rights of action it may have against the Building Contractor and the Professional Team to the Council absolutely and the Developer hereby irrevocably appoints the Council as its attorney to sign, execute and deliver on its behalf all deeds and documents and to do all acts and things necessary to give effect to such assignment.

20. ALIENATION

20.1 The Developer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with its interest in this agreement or any part of it nor agree to do so.

21. ACTIONS AND PROCEEDINGS

21.1 The Developer shall diligently pursue any actions or proceedings required by the Council against the Building Contractor or a member of the Professional Team in order to enforce the performance of their respective obligations.

21.2 The Developer shall hold any sums recovered as a result of such actions or proceedings on trust for the Council and shall apply them in remedying the situation that gave rise to the action or proceedings.

21.3 The Developer shall take account of any requests or proposals made by the Council in relation to the conduct of any such actions or proceedings

22 FREEDOM OF INFORMATION

22.1 The Developer acknowledges that the Council is subject to the requirements of FOIA and the Environmental Information Regulations and will assist and cooperate with the Council (at the Developer's expense), to enable the Council to comply with its Information disclosure requirements.

22.2 The Developer will, and will procure that its sub-contractors shall:

22.2.1 transfer any Request for Information to the Council, as soon as practicable after receipt and in any event within two Working Days (as defined in FOIA) of receiving a Request for Information;

22.2.2 provide the Council, as the case may be, with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (as defined in FOIA), or such other period as the Council may specify, of the Council requesting that Information; and

22.2.3 provide all necessary assistance as reasonably requested by the Council, to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.

22.3 The Council shall be solely responsible for determining whether any Information:

22.3.1 is exempt from disclosure in accordance with FOIA or the Environmental Information Regulations;

22.3.2 is to be disclosed in response to a Request for Information; and

22.3.3 in no event shall the Developer respond directly to a Request for Information unless expressly authorised to do so by the Council.

22.4 The Developer acknowledges that the Council may, acting in accordance with any applicable Code of Practice issued under FOIA or the Environmental Information Regulations, be required to disclose Information without consulting with the Developer.

22.5 The Developer shall ensure that all information produced in relation to this Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

22.6 The Council further agrees with the Developer (to the extent that provided such agreement does not prejudice its obligations under FOIA) that it will take account, in relation to any Request for Information, of any representations made by the Developer.

23. Guarantee[13]

23.1 The Guarantor covenants with the Council to comply with the obligations set out in this clause.

23.2 Subject to paragraphs 4 and 6 in respect of the period starting on the date of this Agreement and ending on Practical Completion the Guarantor as a primary obligor hereby irrevocably and unconditionally guarantees to the Council to procure the due and punctual performance and observance by the Developer of all its obligations in, under and arising from the Building Contract and this Agreement and, as the case may be (in the event of any breach or failure by the Developer) the Guarantor covenants with the Council itself to perform or procure the performance of the Developer's obligations.

23.3 As a separate and independent obligation, without prejudice to sub-clause 18(2) but taking into account any payments made thereunder, the Guarantor hereby agrees, as a primary obligation, to indemnify and keep indemnified the Council immediately on written demand from all losses, claims, liabilities, damages, costs and expenses which may be incurred or suffered by the Council as a result of or in connection with (whether directly or indirectly) any failure by the Developer or the Guarantor (whether or not caused by or connected with any invalidity, illegality, voidability, unenforceability or ineffectiveness) fully and promptly to pay or discharge their respective obligations hereunder as and when the same shall respectively become (or, but for

[13] If required.

any such invalidity, legality, voidability, unenforceability or ineffectiveness, would have become) due for payment or discharge and against all reasonable and proper costs and expenses which Council incurs in connection with the enforcement of the provisions of this clause.

23.4 The liability of the Guarantor shall cease altogether on Practical Completion but without prejudice to the liability of the Guarantor in respect of any antecedent breach of its obligations hereunder.

23.5 The obligations of the Guarantor shall not be affected by:

23.5.1 any other agreement entered into by the Developer;

23.5.2 any time or indulgence given by the Council; or

23.5.3 any other act or omission, except an express release of the Guarantor or any variation of the Guarantor's liability given in writing by the Council.

24. AGREEMENT FOR LEASE

24.1 In consideration of the Developer’s obligations under this agreement, the Council shall grant to the Developer and the Developer shall accept from the Council the Lease on the terms set out in this Agreement.

24.2 The Developer cannot require the Council to grant the Lease to any person other than the Developer.

24.3 The Developer cannot assign, sublet, charge, or otherwise share or part with the benefit of this agreement whether in relation to the whole or any part of the Property.

24.4 Conditions 1.4, 3.2 and 9.8.3 do not apply to this agreement.

25 EXCLUSION OF SECURITY OF TENURE

25.1 The parties confirm that:

25.1.1 the Council served a notice on the Developer, as required by section 38A(3)(a) of the LTA 1954 and which applies to the tenancy to be created by the Lease, [not less than 14 days] before this agreement was entered into; and

25.1.2 the Developer **OR** [NAME OF DECLARANT], who was duly authorised by the Tenant to do so], made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954.

25.2 [The parties confirm that:[14]

25.2.1 the Council served a notice on the Guarantor, as required by section 38A(3)(a) of the LTA 1954 and which applies to the tenancy to be created by the Lease, [not less than 14 days] before this agreement was entered into; and

25.2.2 [the Guarantor **OR** [NAME OF DECLARANT], who was duly authorised by the Guarantor to do so], made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954.]

26. [**GUARANTOR**

26.1 [In consideration of the Council having entered into this agreement at the request of the Guarantor, the Guarantor guarantees and agrees with the Council that:

26.1.1 the Guarantor shall:

26.1.1.1 execute the counterpart Lease and deliver it to the Council's Conveyancer on completion;

26.1.2 the Developer shall perform the Developer's obligations in this Agreement;

26.1.3 if the Developer fails to perform any of its obligations under this Agreement, the Guarantor shall perform them (including, if required to do so by notice in writing from the Council, entering into the Lease in accordance with the terms of this Agreement as if the

Guarantor were named in the Lease as tenant in place of the Tenant); and

26.1.4 if:

26.4.1.1 an Event of Default occurs in respect of the Tenant or this agreement is disclaimed following the insolvency of the Tenant; and

26.4.1.2 within [NUMBER] [weeks **OR** months] of such Event of Default or disclaimer the Council gives notice in writing to the Guarantor requiring the Guarantor to enter into the Lease as the tenant under the Lease in accordance with this agreement;

then with effect from such notice all obligations of the Tenant under this agreement shall be deemed to have been entered into by the Guarantor as though it were named as tenant in place of the Tenant under this agreement and the Guarantor shall enter into the Lease in accordance with the terms of this agreement as tenant in place of the Tenant.]

26.5 In consideration of the Council having entered into this agreement at the request of the Guarantor, the Guarantor agrees with the Council as a separate and independent primary obligation to indemnify the Council against any failure by the Tenant to observe or perform any of the Developers obligations in this agreement.

26.6 The liability of the Guarantor shall not be affected by:

26.6.1 any time or indulgence granted by the Council to the Tenant;

26.6.2 any delay or forbearance by the Council in enforcing the payment of any sums or the observance or performance of any of the Tenant's obligations in this agreement or in making any demand in respect of any of them;

26.6.2 the Council exercising any right or remedy against the Tenant for any failure to pay any sums due under this agreement or to observe or perform the Tenant's obligations in this agreement;

26.6.3 [a release or compromise of the liability of any one of the persons who is the Guarantor,

or the grant of any time or concession to any one of them;]

26.6.4 any legal limitation or disability on the Tenant or any invalidity or irregularity of any of the Tenant's obligations under this agreement or any unenforceability of any of them against the Tenant;

26.6.5 the Tenant being dissolved, or being struck off the register of companies or otherwise ceasing to exist, or, if the Tenant is an individual, by the Tenant dying or becoming incapable of managing its affairs; or

26.6.6 any other act or omission except an express [written] release [by deed] of the Guarantor by the Council.]

27. CONDITIONS

27.1 The Part 1 Conditions are incorporated in this agreement, in so far as they:

27.1.1 are applicable to the grant of a lease;

27.1.2 are not inconsistent with the other clauses in this agreement; and

27.1.3 have not been modified or excluded by any of the other clauses in this agreement.

27.2 The terms used in this agreement have the same meaning when used in the Part 1 Conditions.

27.3 The Part 2 Conditions are not incorporated in this agreement.

27.4 The following Conditions are amended:

27.4.1 Condition 1.1.1(d) so that reference to completion date in Condition 1.1.1(d) is to the Lease Completion Date as defined by this agreement;

27.4.2 Condition 1.1.1(e) so that reference to contract rate in Condition 1.1.1(e) is to the Contract Rate as defined by this agreement; and

27.4.3 Condition 1.1.1(o) so that reference to VAT in Condition 1.1.1(o) is to VAT as defined by this agreement.

32.5 Condition 1.1.4(a) does not apply to this agreement.

32.6 Condition 9.1.1 is amended so that the words ‘’completion date is twenty working days after the date of completion but’’ are deleted.

32.7 Condition 11.2.2 is amended to include the words “(d) ‘’transfer’’ includes the grant of a lease.”

33. DEDUCING TITLE

33.1 The Council’s freehold title to the Property has been deduced to the Developer’s Conveyancer before the date of this agreement.

33.2 The Developer is deemed to have full knowledge of the Council’s title and is not entitled to raise any objection, enquiry or requisition in relation to the Council’s title.

33.3 Conditions 7.1, 7.2, 7.3, 7.4.2, 11.2.4 and 11.3 do not apply to this agreement.

34. TITLE GUARANTEE

34.1 The Council shall grant the Lease with no title guarantee and with no covenants for title, whether express or implied.

35 MATTERS AFFECTING THE PROPERTY

35.1 The Council shall grant the Lease to the Developer free from encumbrances other than:

35.1.1 any matters, other than financial charges, contained or referred to in the entries or records made in registers maintained by HM Land Registry as at [DATE AND TIME OF OFFICIAL COPIES] under title number DT383043.

35.1.2 all matters contained or referred to in the Lease;

35.1.3 any matters discoverable by inspection of the Property before the date of this agreement;

35.1.4 any matters which the Council does not and could not reasonably know about;

35.1.5 any matters, other than financial charges, disclosed or which would have been disclosed by the searches and enquiries that a prudent tenant would have made before entering into this agreement;

35.1.6 public requirements;

35.1.7 any matters which are interests which override first registration under Schedule 1 to the Land Registration Act 2002.

38.2 The Tenant is deemed to have full knowledge of the matters referred to in *Clause [38.1]* and shall not raise any enquiry, objection, requisition or claim in respect of any of them.

38.3 Conditions 4.1.1, 4.1.2, 4.1.3 and 4.2.1 do not apply to this agreement.

38.4 Condition 7.6.3 is amended so that reference to Condition 4.1.2 is reference to *Clause [38.1]*.

39. DAMAGE AFTER PRACTICAL COMPLETION

39.1 The Developer shall not be entitled to refuse to complete or to delay completion of the grant of the Lease due to any event occurring after the Practical Completion Date that results in:

39.1.1 any damage to the Property or any part of it;

39.1.2 any damage to the means of access to the Property; or

39.1.3 any deterioration in the Property's condition.

39.2 The provisions in the Lease relating to insurance of the Property shall apply from the Practical Completion Date.

40. NOTICES

40.1 Any notice given under this agreement must be in writing.

40.2 Any notice given under this agreement must be:

40.2.1 delivered by hand; or

40.2.2 sent by pre-paid first class post or other next working day delivery service.

40.3 Any notice given under this agreement must be sent to the relevant party as follows:

40.3.1 to the Council at:

Town Hall
Bourne Avenue
Bournemouth
BH2 6DY

marked for the attention of: Service Director for Law & Governance/the Monitoring Officer

40.3.2 to the Developer at:

[ADDRESS]
[DX: [DX NUMBER]]
[Fax: [FAX NUMBER]]
marked for the attention of: [NAME/POSITION]

or at the Developer's Solicitors, quoting the reference [REFERENCE];

[40.3.3 to the Guarantor at:

[ADDRESS]
[DX: [DX NUMBER]]
[Fax: [FAX NUMBER]]
marked for the attention of: [NAME/POSITION]

or at the Guarantor's Solicitors, quoting the reference [REFERENCE];]

or as otherwise specified by the relevant party by notice in writing to the other party.

40.4 Any change of the details in *Clause [40.3]* specified by the relevant party by notice in writing to each other party shall take effect for the party notified of the change at 9.00 am on the later of:

40.4.1 the date, if any, specified in the notice as the effective date for the change; or

40.4.2 the date five Working Days after deemed receipt of the notice.

40.5 Any notice given in accordance with [*Clause 40.1*, *Clause 40.2* and *Clause 40.3]* will be deemed to have been received:

40.5.1 if delivered by hand, on signature of a delivery receipt [or at the time the notice or document is left at the address] provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

40.5.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

40.6 In proving delivery of a notice or document, it will be sufficient to prove that:

40.6.1 a delivery receipt was signed or that the notice or document was left at the address; or

40.6.2 the envelope containing the notice or document was properly addressed and posted by pre-paid first class post or other next working day delivery service.

40.7 A notice given under this agreement shall not be validly given if sent by email.

40.8 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

41. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

42. NO PARTNERSHIP

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Council and the Developer.

43. PREVENTION OF CORRUPTION

43.1 The Developer shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the agreement or any other agreement with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the lease or any such licence or agreement.

43.2 The Developer warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with this agreement.

43.3 If the Tenant, its staff or anyone acting on its behalf, engages in conduct prohibited by clauses 63.1 or 63.2, the Council may:

43.3.1 terminate the lease and recover from the Tenant the amount of any loss suffered by it resulting from the termination; or

43.3.2 recover in full from the Tenant any other loss sustained by it in consequence of any breach of those conditions.

44. COUNCIL AS LOCAL AUTHORITY

Nothing in this Lease shall prejudice or affect any statutory right power obligation or duty for the time being vested in the Council as local authority for the area in which the Property is located and all such rights powers obligations and duties shall in regard to the Property and any building or works thereon or the occupiers thereof be enforceable and exercisable by the Council as fully and freely as if the Council were not the owner of or otherwise interested in the Property and this Lease had not been executed.

45. AGREEMENTS AND DECLARATIONS

45.1 Notwithstanding Practical Completion this Agreement will remain in full force and effect in respect of any outstanding obligations and agreements.

45.2 Disputes will be determined by the Expert in accordance with Schedule 3.

45.3 This Agreement is governed by the law of England and Wales and is subject to the jurisdiction of the English courts.

IN WITNESS whereof the Parties have executed this document as a deed and delivered it on the date first written.

EXECUTED AS A DEED BY)
BOURNEMOUTH, CHRISTCHURCH)
AND POOLE COUNCIL by affixing)
the common seal in the presence of:)

Monitoring Officer/Deputy Monitoring Officer

[EXECUTION CLAUSE - DEVELOPER]

[EXECUTION CLAUSE - GUARANTOR]

SCHEDULE 1

Design Parameters

1. The design must take account of the vision for the facility and the proposals and conditions of the Planning Application.

2. The design should provide:-

   - A café space suitable for serving hot and cold food as envisaged in the Lease

   - Community Facilities which shall include:-
     Four changing spaces, each including self-contained shower facilities and accommodating up to fourteen persons. Each changing room should measure no less than 16 square metres (inclusive of shower area) changing areas for match officials, including self-contained shower facilities public conveniences to include male toilets, female toilets and a disabled/family room.

3. The design should be such that it allows for cricket and football play to continue on the recreation ground.

4. The building must be designed so as to comply with all requirements of Building Control including fire detection system & emergency lighting.

5. The design must ensure that the building is secure during non-operational hours and fitted with an appropriate intruder alarm.

6. The plant/boiler room contains an irrigation tank which is essential for the maintenance of the cricket pitch. This could be moved, by agreement, at the operators cost.

7. The design must include a separate water meter for the irrigation tank.

SCHEDULE 2

Part 1 - Pre-construction preparation

1. The installation of suitable welfare provision for staff and contractors working on the Site.

2. The erection of safety fencing and site signage around the Site.

3. The provision of such security measures as are required to safeguard and secure the Site throughout the Development.

4. Installation of the Temporary Public Conveniences in a location advised to the Developer by the Council so that can be made available for use from the date on which the existing toilets are decommissioned.

Part 2 – Obligations relating to the Temporary Facilities Area

5. The Developer will ensure that Temporary Public Conveniences are made available for use by the public throughout the Development Period.

6. The Building or as an alternative the Temporary Public Conveniences shall be open and available for use by the public between the hours of 10am and dusk every day.

7. The Developer shall procure that the Temporary Public Conveniences are kept clean and supplied with sufficient stocks of consumables.

SCHEDULE 3

Provisions relating to the Expert

1. The Expert shall be an independent surveyor of at least 10 years' experience of commercial property in the Bournemouth Christchurch and Poole administrative area who will act as an expert and will be appointed by the Council and the Developer by agreement, or in default of agreement (within one month of a request by one of them to the other to agree a proposed person to act as the Expert) on the application of either the Council or the Developer by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors whose decision will be final and binding on the Parties.

2. The Expert shall have power to award costs and reimbursement of disbursements but if he does not do so the Parties will bear their own.

3. The Expert will give the Parties an opportunity to make representations to him and will consider them before making his decision.

8. The Expert will be entitled to obtain opinions from others if he wishes and make provisions for the costs of doing so to be paid by either of the Parties.

9. The Expert will comply with any time limits or other directions agreed by the Parties on or before his appointment and in the absence of any such time limits or direction will act expeditiously.

SCHEDULE 4

Deed Of Warranty – Building Contractor

DATED 2019

[ ]

and

BOURNEMOUTH, CHRISTCHURCH & POOLE

and

[CONTRACTOR]

WARRANTY AGREEMENT

relating to

Agreed Development at

Whitecliff Pavilion

This deed is dated [DATE]

PARTIES

(1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Contractor)**

(2) **BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL** of Town Hall, Bourne Avenue, Bournemouth **(Beneficiary)**

(3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Employer)**]

BACKGROUND

(A) The Employer has engaged the Contractor to carry out design and construction work.

(B) The Beneficiary, as the freehold owner of the Property, has an interest in the design and construction work.

(C) The Employer requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.

(D) The Contractor has agreed to enter into this agreement with the Employer and the Beneficiary for the benefit of the Beneficiary.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Building Contract: an agreement in writing dated [DATE] between the Employer and the Contractor.

Business Day: a day other than a Saturday, Sunday or public holiday in [England] when banks in [London] are open for business.

Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

a. posing a threat to the health and safety of any person; or

b. posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or

c. reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or

d. not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or

e. having been supplied or placed on the market in breach of the Construction Products Regulations.

Funder: a person that has provided, or is to provide, finance in connection with:

a. the whole or any part of the Works or the completed Works; or

b. the site of the Works

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures,

reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works.

Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Works.

Property: Whitecliff Pavilion, Whitecliff Recreation ground, Sandbanks Road, Poole

Works: the design, construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Contractor under the Building Contract.

1.2 Clause headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.11 A reference to **writing** or **written** includes fax but not email.

1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.

1.13 References to clauses are to the clauses of this agreement.

1.14 [Unless otherwise expressly provided, the obligations and liabilities of [the persons forming the] [PARTIES] under this agreement are joint and several.]

1.15 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMPLY WITH BUILDING CONTRACT

2.1 The Contractor warrants to the Beneficiary that:

(a) it has complied, and shall continue to comply, with its obligations under the Building Contract, including its obligations to:

(i) carry out and complete the Works properly; and

(ii) use workmanship and materials of the quality and standard specified in the Building Contract;

(b) [without affecting *Clause 2.1(a)*, and to the extent that it takes responsibility for the same under the Building Contract, it:

(i) has designed, or will design, the Works; and

(ii) has selected, or will select, goods, materials, plant and equipment for incorporation in the Works, with all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Works; and

(c) it has not and will not specify or use anything in the Works, which, at the time of specification or use, is Deleterious.

2.2 In proceedings for breach of this *Clause 2*, the Contractor may:

(a) rely on any limit of liability or other term of the Building Contract; and

(b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Employer, under the Building Contract (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Building Contract).

2.3 The Contractor's duties or liabilities under this agreement shall not be negated or diminished by:

(a) any approval or inspection of:

(i) the Property; or

(ii) the Works; or

(iii) any designs or specifications for the Property or the Works; or

(b) any testing of any work, goods, materials, plant or equipment; or

(c) any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Employer.

2.4 This agreement shall not negate or diminish any duty or liability otherwise owed to the

Beneficiary by the Contractor.

3. STEP-IN RIGHTS: CONTRACTOR MAY NOT TERMINATE

3.1 The Contractor shall not exercise, or seek to exercise, any right to terminate its employment under the Building Contract for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Contractor shall specify the grounds for the Contractor's proposed termination.

3.2 If the Building Contract allows the Contractor a shorter notice period for the exercise of a right referred to in *Clause 3.1*, the notice period in the Building Contract shall be extended to take account of the notice period required under *Clause 3.1*.

3.3 The Contractor's right to terminate its employment under the Building Contract shall cease if, within the period referred to in *Clause 3.1*, the Beneficiary gives notice to the Contractor, copied to the Employer:

(a) requiring the Contractor not to terminate its employment under the Building Contract;

(b) acknowledging that the Beneficiary (or its nominee) will assume all the Employer's obligations under the Building Contract; and

(c) undertaking that the Beneficiary or its nominee will pay to the Contractor:

(i) any sums due and payable to the Contractor under the Building Contract in future; and

(ii) within [20] Business Days any sums then due and payable to the Contractor under the Building Contract that are unpaid.

3.4 If the Beneficiary (or its nominee) serves notice on the Contractor under *Clause 3.3*, then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).

3.5 In complying with this *Clause 3*, the Contractor:

(a) does not waive any breach of the Building Contract or default under the Building Contract by the Employer; and

(b) may exercise its right to terminate its employment under the Building Contract, after the expiry of the notice period referred to in *Clause 3.1*, unless the Contractor's right to terminate has ceased under *Clause 3.3*.

4. STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN

4.1 Without affecting *Clause 3.1*, if the Beneficiary serves a notice on the Contractor, copied to the Employer, that:

(a) confirms that the Beneficiary wishes to step-in to the Building Contract; and

(b) complies with the requirements for a Beneficiary's notice under *Clause 3.3*,

then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).

4.2 The Contractor shall assume that, between the Employer and the Beneficiary, the Beneficiary may give a notice under *Clause 4.1*. The Contractor shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this *Clause 4*, the Contractor does not waive any breach of the Building Contract or default under the Building Contract by the Employer.

5. STEP-IN RIGHTS: CONTRACTOR'S POSITION AND EMPLOYER'S CONSENT

5.1 The Contractor shall not incur any liability to the Employer by acting in accordance with *Clause 3* or *Clause 4*.

5.2 The Employer has executed this agreement to confirm its consent to the agreement.

6. NO INSTRUCTIONS TO CONTRACTOR BY BENEFICIARY

Unless the Beneficiary has stepped-in under *Clause 3* or *Clause 4*, the Beneficiary may not give instructions to the Contractor under this agreement.

7. COPYRIGHT

7.1 The Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Contractor for any purpose relating to the Works and the Property, including any of the Permitted Uses.

7.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Works, but not to reproduce the designs contained in the Material in any such extension.

7.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Contractor.

7.4 The Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

7.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Contractor. On the Beneficiary's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Beneficiary.

8. [PROFESSIONAL INDEMNITY INSURANCE [15]

8.1 The Contractor shall maintain professional indemnity insurance for an amount of at least £10 Million for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this agreement and ending 12 years after the date of practical completion, provided that such insurance is available at commercially reasonable rates. The Contractor shall maintain that professional indemnity insurance:

(a) with reputable insurers lawfully carrying on insurance business in the UK;

[15] This will be required if the contractor is also responsible for the design under the building contract.

(b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and

(c) on terms that:

(i) do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and

(ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

8.2 Any increased or additional premium required by insurers because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

8.3 The Contractor shall immediately inform the Beneficiary if the Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Contractor regarding the Works and the Property, without that insurance.

8.4 Whenever the Beneficiary reasonably requests, the Contractor shall send the Beneficiary evidence that the Contractor's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Contractor's insurers or brokers confirming:

(a) the Contractor's then current professional indemnity insurance; and

(b) that the premiums for that insurance have been paid in full at the date of that letter.

9. LIABILITY PERIOD

The Beneficiary may not commence any legal action against the Contractor under this agreement after 12 years from the date of practical completion of all of the Works.

10. NOTICES

10.1 For the purposes of this clause, but subject to *Clause 10.7*, notice includes any other

communication.

10.2 A notice given to a party under or in connection with this agreement:

(a) shall be in writing and in English;

(b) shall be signed by or on behalf of the party giving it;

(c) shall be sent to the party for the attention of the contact and at the address, or DX number listed in *Clause 10.3*;

(d) shall be sent by a method listed in *Clause 10.5*; and

(e) unless proved otherwise is deemed received as set out in *Clause 10.5* if prepared and sent in accordance with this clause.

10.3 The parties' addresses and contacts are as set out in this table:

Party	**Contact**	**Address**	**DX number**
Contractor	[POSITION OF CONTACT]	[ADDRESS]	[DX NUMBER]
Beneficiary	[POSITION OF CONTACT]	[ADDRESS]	[DX NUMBER]
Employer	[POSITION OF CONTACT]	[ADDRESS]	[DX NUMBER]

10.4 A party may change its details given in the table in *Clause 10.3* by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

(a) the date, if any, specified in the notice as the effective date for the change; or

(b) the date five Business Days after deemed receipt of the notice.

10.5 This table sets out:

(a) delivery methods for sending a notice to a party under this agreement; and

(b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in *Clause 10.6*:

Delivery method	**Delivery date and time**
Delivery by hand.	On signature of a delivery receipt.
Pre-paid first class recorded delivery or other next working day delivery service providing proof of delivery.	9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
Document exchange (DX).	9.00 am on the second Business Day after being put into the DX.

10.6 For the purpose of *Clause 10.5* and calculating deemed receipt:

(a) all references to time are to local time in the place of deemed receipt; and

(b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

10.7 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10.8 A notice given under this agreement is not valid if sent by email.

11. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

12. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

13. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

EXECUTION CLAUSES

SCHEDULE 5

Deed of Warranty by the Developer's Consultants

DATED 20

[developer]

and

BOURNEMOUTH, CHRISTCHURCH & POOLE COUNCIL

and

[CONSULTANT]

WARRANTY AGREEMENT

relating to

Agreed Development at

Whitecliff Pavilion

This deed is dated [DATE]

PARTIES

(1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Consultant)**

(2) **BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL** of Town Hall, Bourne Avenue, Bournemouth, BH2 6DY **(Beneficiary)**

(3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Client)**]

BACKGROUND

(A) The Client has engaged the Consultant to perform the Services in relation to the Project.

(B) The Beneficiary, as freehold owner of the Property, has an interest in the Project.

(C) The Client requires the Consultant to enter into a collateral warranty in favour of the Beneficiary.

(D) The Consultant has agreed to enter into this agreement with the Client and the Beneficiary, for the benefit of the Beneficiary.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England

when banks in London are open for business.

CDM Regulations: the Construction (Design and Management) Regulations 2015 (SI 2015/51).

Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

a. posing a threat to the health and safety of any person; or

b. posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project; or

c. reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project; or

d. not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or

e. having been supplied or placed on the market in breach of the Construction Products Regulations.

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal,

letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.

Professional Appointment: an agreement in writing dated [DATE] between the Consultant and the Client.

Programme: the programme, as defined in the Professional Appointment.

Project: the design and construction of a sports pavilion, incorporating a café area and community facilities as described in the Outline Consent together with ancillary works on the Property.

Property: Whitecliff Pavilion, Sandbanks Road, Poole.

Required Standard: all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services on works similar in scope and character to the Project.

Services: the services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.

Third Party Agreement: any agreement between the Client and a third party relating to the Project and of which:

a. a copy, or relevant extract, is attached at [Schedule 5 **OR** [REFERENCE]] to the Professional Appointment; or

b. the Client notifies the Consultant in writing after the date of the Professional Appointment [enclosing a copy or relevant extracts].

1.2 Clause headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.

1.12 References to clauses are to the clauses of this agreement.

1.13 [Unless otherwise expressly provided, the obligations and liabilities of [the persons forming the] [PARTIES] under this agreement are joint and several.]

1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMPLY WITH PROFESSIONAL APPOINTMENT

2.1 The Consultant warrants to the Beneficiary that:

(a) it has complied, and shall continue to comply, with its obligations under the Professional Appointment, including its obligations to:

(i) carry out and fulfil, in all respects, the duties of a designer [and principal designer] [16]under the CDM Regulations;

(ii) not, without the Client's written consent, make any material change to the designs or specifications for the Project after they have been settled or approved; and

(iii) act fairly and impartially when exercising its power to issue certificates and award extensions of time under any building contract relating to the Project.

(b) it has exercised and shall continue to exercise the Required Standard:

(i) when performing the Services;

(ii) not to specify for use anything in the Project, which is Deleterious at the time of specification or use;

(iii) to comply with (and ensure the completed Project complies with) any Act of Parliament and any instrument, rule or order made under any Act of Parliament;

(iv) to comply with (and ensure the completed Project complies with) any regulation or bye-law of any local authority, statutory undertaker or public or private utility or undertaking that has any jurisdiction over the Project or with whose systems or property the Project is or will be connected;

(v) to perform the Services and prepare all Material for those elements of the Project for which the Consultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress

[16] As appropriate

of the Project;

(vi) to ensure that the Project complies with all planning agreements, permissions and conditions; and

(vii) not to cause or contribute to any breach by the Client of any Third Party Agreement provided that, where the Client notifies the Consultant of a Third Party Agreement after the date of the Professional Appointment, the Consultant is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the date of the Professional Appointment.

2.2 In proceedings for breach of this *Clause 2*, the Consultant may:

(a) rely on any limit of liability or other term of the Professional Appointment; and

(b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).

2.3 The Consultant's duties or liabilities under this agreement shall not be negated or diminished by:

(a) any approval or inspection of:

(i) the Property; or

(ii) the Project; or

(iii) any designs or specifications for the Property or the Project; or

(b) any testing of any work, goods, materials, plant or equipment; or

(c) any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Client.

2.4 This agreement shall not negate or diminish any other duty or liability otherwise owed to the Beneficiary by the Consultant.

3. STEP-IN RIGHTS: CONSULTANT MAY NOT TERMINATE

3.1 The Consultant shall not exercise, or seek to exercise, any right to terminate its employment under the Professional Appointment for any reason (including any breach on the part of the Client) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Consultant shall specify the grounds for the Consultant's proposed termination.

3.2 If the Professional Appointment allows the Consultant a shorter notice period for the exercise of a right referred to in *Clause 3.1*, the notice period in the Professional Appointment shall be extended to take account of the notice period required under *Clause 3.1*.

3.3 The Consultant's right to terminate its employment under the Professional Appointment shall cease if, within the period referred to in *Clause 3.1*, the Beneficiary gives notice to the Consultant, copied to the Client:

(a) requiring the Consultant not to terminate its employment under the Professional Appointment;

(b) acknowledging that the Beneficiary (or its nominee) will assume all the Client's obligations under the Professional Appointment; and

(c) undertaking that the Beneficiary or its nominee will pay to the Consultant:

(i) any sums due and payable to the Consultant under the Professional Appointment in future; and

(ii) within 20 Business Days any sums then due and payable to the Consultant under the Professional Appointment that are unpaid.

3.4 If the Beneficiary (or its nominee) serves notice on the Consultant under *Clause 3.3*, then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (to the exclusion of the Client).

3.5 In complying with this *Clause 3*, the Consultant:

(a) does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client; and

(b) may exercise its right to terminate its employment under the Professional Appointment after the expiry of the notice period referred to in *Clause 3.1*, unless the Consultant's right to terminate has ceased under *Clause 3.3*.

4. STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN

4.1 Without affecting *Clause 3.1*, if the Beneficiary serves a notice on the Consultant, copied to the Client, that:

(a) confirms that the Beneficiary wishes to step-in to the Professional Appointment; and

(b) complies with the requirements for a Beneficiary's notice under *Clause 3.3*,

then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (or its nominee), to the exclusion of the Client.

4.2 The Consultant shall assume that, between the Client and the Beneficiary, the

Beneficiary may give a notice under *Clause 4.1*. The Consultant shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this *Clause 4* the Consultant does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client.]

5. STEP-IN RIGHTS: CONSULTANT'S POSITION AND CLIENT'S CONSENT

5.1 The Consultant shall not incur any liability to the Client by acting in accordance with *Clause 3* or *Clause 4*.

5.2 The Client has entered into this agreement to confirm its consent to the agreement.

6. NO INSTRUCTIONS TO CONSULTANT BY BENEFICIARY

Unless the Beneficiary has stepped-in under *Clause 3* or *Clause 4*, the Beneficiary may not give instructions to the Consultant under this agreement.

7. COPYRIGHT

7.1 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.

7.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

7.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.

7.4 The Consultant shall not be liable for use of the Material for any purpose

other than that for which it was prepared and/or provided.

7.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

8. PROFESSIONAL INDEMNITY INSURANCE

8.1 The Consultant shall maintain professional indemnity insurance for an amount of at least £10 Million for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Project, provided that such insurance is available at commercially reasonable rates. The Consultant shall maintain that professional indemnity insurance:

(a) with reputable insurers lawfully carrying on insurance business in the UK;

(b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and

(c) on terms that:

(i) do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and

(ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

8.2 Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

8.3 The Consultant shall immediately inform the Beneficiary if the Consultant's

required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project and the Property, without that insurance.

8.4 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Consultant's insurers or brokers confirming:

(a) the Consultant's then current professional indemnity insurance; and

(b) that the premiums for that insurance have been paid in full at the date of that letter.

9. LIABILITY PERIOD

The Beneficiary may not commence any legal action against the Contractor under this agreement after 12 years from the date of practical completion of all of the Works.

10. NOTICES

10.1 For the purposes of this clause, but subject to *Clause [10.7]*, notice includes any other communication.

10.2 A notice given to a party under or in connection with this agreement:

(a) shall be in writing and in English;

(b) shall be signed by or on behalf of the party giving it;

(c) shall be sent to the party for the attention of the contact and at the address, or DX number listed in *Clause [10.3]*;

(d) shall be sent by a method listed in *Clause [10.5]*; and

(e) unless proved otherwise is deemed received as set out in *Clause [10.5]* if prepared and sent in accordance with this clause.

10.3 The parties' addresses and contacts are as set out in this table:

Party	**Contact**	**Address**	**DX number**
Contractor	[POSITION OF CONTACT]	[ADDRESS]	[DX NUMBER]
Beneficiary	[POSITION OF CONTACT]	[ADDRESS]	[DX NUMBER]
Employer	[POSITION OF CONTACT]	[ADDRESS]	[DX NUMBER]

10.4 A party may change its details given in the table in *Clause [10.3]* by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

(a) the date, if any, specified in the notice as the effective date for the change; or

(b) the date five Business Days after deemed receipt of the notice.

10.5 This table sets out:

(a) delivery methods for sending a notice to a party under this agreement; and

(b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in *Clause [10.6]*:

Delivery method	**Delivery date and time**

Delivery by hand.	On signature of a delivery receipt.
Pre-paid first class recorded delivery or other next working day delivery service providing proof of delivery.	9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
Document exchange (DX).	9.00 am on the second Business Day after being put into the DX.

10.6 For the purpose of *Clause [10.5]* and calculating deemed receipt:

(a) all references to time are to local time in the place of deemed receipt; and

(b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

10.7 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10.8 A notice given under this agreement is not valid if sent by email.

11. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

12. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

13. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

EXECUTION CLAUSES

SCHEDULE 6

Form of the Lease

SCHEDULE 7

Form of the Property Management Agreement

Schedule 8

Implementation Plan

1. Prior to the issue of the Certificate of Practical Completion the Developer shall submit the details of the Booking System they intend to utilise to fulfil their obligations pursuant to the Property Management Agreement to the Council for approval. [17]

2. Within 5 working days after the Council has received the details of the Booking System the Council shall give notice to the Developer that the Council either approves or disapproves of the Booking System.

3. If the Council does not approve the proposed Booking System, the Developer shall submit a revised Booing System to the Council for approval within 10 working days of receipt of the notice under para [4.]

4. Prior to the issue of the certificate of Practical Completion the Developer shall submit their proposals for the operation of the Community Facilities pursuant to the Property Management Agreement to the Council for approval.

5. Within 5 working days after the Council has received the proposals for the operation of the Community Facilities the Council shall give notice to the Developer that the Council either approves or disapproves of the proposals.

6. If the Council does not approve the proposal for the operation of the Community Facilities, the Developer shall submit a revised proposal for the operation of the Community Facilities to the Council for approval within 5 working days of receipt of the notice under para [5.]

7. Prior to the issue of the Certificate of Practical Completion the Developer shall submit their proposals for café signage to the Council for approval.

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[17] Depending upon the form the pitch booking system takes there may be additional steps – for example details of the software licences to be provided.

8. Within 5 working days after the Council has received the proposals for the café signage the Council shall give notice to the Developer that the Council either approves or disapproves of the proposals.

9. If the Council does not approve the proposal for the café signage, the Developer shall submit a revised proposal for the café signage to the Council for approval within 5 working days of receipt of the notice under para [8.]