Whilst the Council has obtained an outline planning permission it is recognised that those tendering may wish to pursue alternative designs for which a new planning application would be submitted.

In those circumstances the obligations in the draft development agreement would be amended to reflect the requirement to obtain a satisfactory planning permission.

The following clauses are provided for illustrative purposes to indicate the form the amendments may take:

Alternative Recitals

(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 the design vison parameters set out in Schedule 1.[1]

(B) The parties have agreed that the Developer will apply for a planning permission for the redevelopment of the Building in a form which is satisfactory to both the Council and the Developer.

(C) Following the grant of a satisfactory planning permission the Developer will carry out the Developer in accordance with the terms of this Agreement.

Additional Definitions:

Condition Precedent: the occurrence of the Satisfaction Date.

Council's Unacceptable Condition: a condition imposed in a Planning Permission or a provision in a Planning Agreement which in the Council's reasonable opinion:

a. will or is likely to limit the occupation or use of the whole or any part of the Property to any designated person or occupier;

b. will or is likely to cause the Planning Permission to be for a limited period only;

c. will or is likely to restrict the operating hours of the Development to hours which are inconsistent with the reasonably anticipated operational requirements of the Council; or

d. will restrict or remove the Developer's ability to comply with the terms and conditions of the Lease or Property Management Agreement.

[1] References to the outline planning would be removed from the Schedule as well.

Counsel means Counsel with not less than 10 years' call experience in planning matters relating to developments of a similar type to the Development and agreed between the Landlord and the Tenant (and in default of agreement appointed by the President).

Court Confirmatory Decision: either:

a. a judgment of the High Court or Court of Appeal confirming the grant of Planning Permission, and the period for an appeal against such a decision has expired without a further Third Party Application being made; or

b. a judgment of the Supreme Court confirming the grant of Planning Permission.

Determining Authority: the local planning authority or other appropriate determining body or person.

Developer's Unacceptable Condition: a condition imposed by the Planning Permission or a provision in a Planning Agreement or the requirement to pay CIL which in the Developer's reasonable opinion will or is likely to increase materially the cost of carrying out the Development.

Final Determination Date: the date on which:

a. a Third Party Application is Finally Determined; and

b. a Satisfactory Planning Permission is finally granted or upheld whether after a reference back to the Determining Authority;

so that such Satisfactory Planning Permission is no longer open to challenge in any way by the issue of further Third Party Applications.

Finally Determined: where a Third Party Application has been made, the first of the following events to occur:

a. permission to bring a Third Party Application (where required) has not been granted and the period within which an application for permission to appeal against such refusal has expired without a further Third Party Application being made;

b. all Third Party Applications have been withdrawn;

c. a Court Confirmatory Decision has been issued; or

d. where a Quashing Order has been issued and the Determining Authority has issued a further Planning Permission, the Review Period in respect of that Planning Permission has expired.

Planning Agreement: an agreement or unilateral undertaking under section 106 of the

Town and Country Planning Act 1990 required to obtain Planning Permission.[2]

Planning Appeal: an appeal by the Developer against:

a. the refusal of the Determining Authority to grant Planning Permission;

b. the non-determination of the Planning Application; or

c. any one or more conditions attached to the Planning Permission.

Planning Appeal Decision: the written decision of the Secretary of State on the Planning Appeal.

Planning Application: approved by the Council under *Clause [*].

Planning Long Stop Date: [[DATE]

Planning Permission: detailed planning permission for the Development.

Quashing Order: the decision of the court to nullify either the Planning Permission granted by:

a. the Determining Authority; or

b. the Secretary of State following a Planning Appeal.

Review Period: either:

a. six weeks and ten working days following the date of issue of a Planning Permission by the Determining Authority; or

b. six weeks following the date of issue of a Planning Appeal Decision.

Satisfaction Date: the latest of the following dates:

a. the date on which it is established under this agreement that a Satisfactory Planning Permission has been granted;

b. the next Working Day after the expiry of the Review Period (provided that no Third Party Application is commenced by such date); and

c. in the event that any Third Party Application is commenced, the next Working Day after the Final Determination Date.

Satisfactory Planning Permission: a Planning Permission and Planning Agreement (if any) free from:

[2] In the event that a planning agreement is required the Council will require indemnities from the developer.

a. any Council's Unacceptable Condition (unless waived by the Council in accordance with this agreement); and

b. any Developer's Unacceptable Condition (unless waived by the Developer in accordance with this agreement).

Secretary of State: the Secretary of State for Communities and Local Government or other appropriate Minister including (where relevant) any inspector appointed to determine any Planning Appeal.

Target Date: the date [NUMBER] [weeks **OR** months] after the Unconditional Date (as may be extended in accordance with *Clause [ ]* or *Clause [ ]*]).

Third Party: a person other than:

a. the Council;

b. the Developer; [or]

c. the Guarantor; or

d. anyone acting on the Council's, [Guarantor's] or Developer's behalf.

Third Party Application: either of the following:

a. a Third Party's application for judicial review of a decision by the Determining Authority to grant a Satisfactory Planning Permission; or

b. a Third Party's application under section 288 of the Town and Country Planning Act 1990 in respect of a decision by the Secretary of State to grant a Satisfactory Planning Permission following a Planning Appeal;

including an application to a higher court appealing against a judgment in respect of an application made under paragraph (a) or (b) above, given in a lower court.

Unacceptable Condition: a Council's Unacceptable Condition or a Developer's Unacceptable Condition.

Unconditional Date: the earlier of:

a. the Satisfaction Date; and

b. the date on which the Condition Precedent is waived in accordance with *clause [ ]*

<u>Deleted Definitions:</u>

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

Clauses:

x. REQUISITE CONSENTS

x.1 The Developer shall apply for and use all reasonable endeavours to obtain the Requisite Consents and will submit the draft Planning Application 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.

x.2 The Council will within 10 Working Days of such submission notify the Developer in writing whether or not the draft Planning Application is approved, and in default shall be deemed not to have approved it.

x.3 Within 5 working days after the Council has notified the Developer of approval the Developer shall submit the Planning Application to the Determining Authority and shall use reasonable endeavours to obtain the grant of a Satisfactory Planning Permission as soon as reasonably possible and in any event by 2 January 2021.

x. 4 The Council in its capacity as landowner shall not do anything which may prejudice or obstruct the progress of any Planning Application or Planning Appeal made pursuant to this agreement.

x.5 The Developer will promptly start and proceed diligently with the Pre-construction Preparations as soon as the Requisite Consents and a Satisfactory Planning Permission have been obtained.

X. CO-OPERATION OF COUNCIL AS LANDOWNER

X.1 The Council shall co-operate with the Developer and use reasonable endeavours to assist the Developer in obtaining a Satisfactory Planning Permission which shall include entering into a Planning Agreement (provided that the Planning Agreement does not contain any Developer' Unacceptable Conditions (unless waived by the Developer in accordance with this agreement) if reasonably required by the Developer or the Determining Authority.

6. NOTIFICATION OF PLANNING DECISIONS

X.1 The Developer shall give notice to the Council within 10working days of the receipt of any planning decision resulting from the Planning Application (whether original, amended or resubmitted). or the decision resulting from a a Planning Appeal.

X.2 Within 20 working days of receiving notice of the grant of such Planning Permission, the Developer shall give notice to the Council in writing whether or not a condition imposed on

the Planning Permission or a requirement to pay CIL is a Developers 's Unacceptable Condition. The Developer shall give reasons if it considers that a condition or requirement is a Developer's Unacceptable Condition.

X.3 Within 20 working days of receiving notice from the Developer under *Clause [ ]* of the grant of such Planning Permission, the Council shall give notice to the Developer in writing whether or not a condition imposed on the Planning Permission is a Council's Unacceptable Condition. The Council shall give reasons if it considers that a condition is a Council's Unacceptable Condition.

X.4 Should the Developer wish to lodge a Planning Appeal against a decision of the Determining Authority not to grant Planning Permission or a decision to grant Planning Permission subject to an Unacceptable Condition the Developer will be required to seek the written consent of the Council in accordance with the procedure set out in clause [requisite consents].

x. PLANNING AGREEMENTS

x.1 If a Planning Agreement is required, the Council shall [(in consultation with the Developer (who shall act reasonably and promptly))] use [best **OR** [all] reasonable] endeavours to negotiate and agree the terms of the Planning Agreement free from any Unacceptable Conditions as quickly as reasonably possible.

x.2 The Council shall keep the Developer regularly informed as to the progress of the Planning Agreement.

x.3 Within 5 working days of the final form of the Planning Agreement being agreed, the Council shall send a copy of it to the Developer.

x.4 At the same time as the Council sends the final form of the Planning Agreement to the Developer in accordance with *Clause x.3*, the Council shall give notice to the Developer in writing whether or not any provision of the final form of any Planning Agreement (if completed in that form) would be a Council's Unacceptable Condition. The Council shall give reasons if it considers that the final form of any Planning Agreement (if completed in that form) would be subject to any Council's Unacceptable Condition.

x.5 Within [NUMBER] working days of receiving the final form of any Planning Agreement from the Council under *Clause [7.3*,] the Developer shall give notice to the Council in writing whether or not any provision of the final form of any Planning Agreement (if completed in that form) would be a Developer's Unacceptable Condition. The Developer shall give reasons if it considers that the final form of any Planning Agreement (if completed in that form) would be subject to a Developer's Unacceptable Condition.

x.6 The Developer shall keep the Council indemnified against all liabilities, proceedings, costs, claims, demands and expenses incurred or arising as a result of a Planning Agreement.]

x.7 The Developer shall keep the Council indemnified against all liabilities, proceedings, costs, claims, demands and expenses incurred or arising out of CIL.

x. RIGHT TO WAIVE UNACCEPTABLE CONDITIONS

x.1 The Council may waive its right to treat any condition to a Planning Permission or provision of a Planning Agreement or requirement to pay CIL as a Council's Unacceptable Condition by giving written notice to the Developer on or before any of the following dates:

(a) the date which is 5 working days after the date on which the Council serves a notice under *Clause [ ]* that the condition or requirement is a Council's Unacceptable Condition;

(b) the date which is 5 working days after the date on which the Council serves a notice under *Clause x.4* that the provision of the final form of a Planning Agreement (if completed in that form) would be a Council's Unacceptable Condition; and

(c) that date which is 5 working days after the date on which it receives the Independent Surveyor's written decision pursuant to *Clause x.5(b)* that a condition to the Planning Permission or provision of the Planning Agreement or requirement to pay CIL is a Council's Unacceptable Condition.

x.2 The Developer may waive its right to treat any condition to a Planning Permission or provision of a Agreement as a Developer's Unacceptable Condition by giving written notice to the Council on or before any of the following dates:

(a) the date which is 5 working days after the date on which the Developer serves a notice under *Clause x.4* that the condition is a Developer's Unacceptable Condition;

(b) the date which is 5 working days after the date on which the Developer serves a notice under *Clause x.5* that the provision of the final form of a Planning Agreement (if completed in that form) would be a Developer's Unacceptable Condition; and

(c) that date which is 5 working days after the date on which it receives the Independent Surveyor's written decision pursuant to *Clause x.5(b)* that a condition to the Planning Permission or provision of the Planning Agreement is a Developer's Unacceptable Condition.

x. THIRD PARTY APPLICATIONS

If a Third Party Application is made, the Council shall:

(a) keep the Developer regularly informed of the progress of that Third Party Application; and
(b) within 5 working days after receiving it, give the Developer a copy of any judgment issued by the court in relation to the Third Party Application proceedings.

x. UNACCEPTABLE CONDITION DISPUTES

x.1 In the event of any dispute arising between the Council and the Developer about whether or not a condition to the Planning Permission, a provision of the Planning Agreement or a requirement to pay CIL is an Unacceptable Condition, the Council and the Developer shall use reasonable endeavours to seek to settle the dispute as quickly as possible. If the dispute has not been settled within a period of 20 working days of the dispute arising then it shall be referred to an Independent Surveyor to determine.

x.2 An Independent Surveyor shall be appointed by agreement between the Council and the Developer or, if the Council and Developer are unable to agree an appointment, either of them may request the appointment to be made by the President.

x.3 An Independent Surveyor must be a Fellow of the RICS, with at least ten years' post qualification experience including experience in development of the same type as the Development.

x.4 If an Independent Surveyor appointed dies or becomes unwilling or incapable of acting[, or does not deliver the decision within the time required by this clause], then:

(a) either the Council or the Developer may apply to the President to discharge the appointed Independent Surveyor and to appoint a replacement Independent Surveyor; and
(b) this clause shall apply in relation to the replacement Independent Surveyor as if they were the first appointed Independent Surveyor.

x.5 The Independent Surveyor shall act as an expert and shall be required to:
(a) decide whether or not a condition to the Planning Permission, provision of the Planning Agreement or requirement to pay CIL is an Unacceptable Condition; and
(b) prepare a written note of the decision and give a copy of the decision to both the Council and the Developer within 20 working days of the date of the Independent Surveyor's appointment.

x.6 The Council and the Developer shall each be entitled to make submissions to the Independent Surveyor and shall provide (or procure that others provide) the Independent Surveyor with the assistance and documents that the Independent Surveyor reasonably requires to reach a decision.

x.7 The Independent Surveyor's written decision shall be final and binding in the absence of manifest error or fraud.

x.8 The costs of the Independent Surveyor shall be borne equally by the Council and the Developer or in such different proportion as the Independent Surveyor shall direct.

x. [PLANNING LONG STOP DATE

x.1 Subject to *Clause x.3*, the Planning Long Stop Date is [DATE] unless on that date:

(a) a Planning Application has been submitted to the Determining Authority but has not been determined;

(b) a Planning Appeal has been lodged but has not been determined;

(c) a Planning Permission has been granted but it is not yet established under this agreement whether or not the Planning Permission is a Satisfactory Planning Permission;

(d) a Satisfactory Planning Permission has been granted but the Review Period has not expired; or

(e) a Satisfactory Planning Permission has been granted but a Third Party Application has been made which has not been Finally Determined;

in which case the Planning Long Stop Date shall be extended as set out in *Clause x.2*.

x.2 If any of the circumstances set out in *Clause x.1(a)* to *Clause x.1(e)* (inclusive) apply, the Planning Long Stop Date shall be extended to:

(a) (where *Clause x.1(a)* applies) the date which is 10 working days after the latest of the following dates:

> **(i)** the date on which the Planning Application is refused by the Determining Authority (including a deemed refusal under section 78(2) of the Town and Country Planning Act 1990);
>
> **(ii)** if a Planning Permission is granted pursuant to the Planning Application, the date on which it is established under this agreement that the Planning Permission is not a Satisfactory Planning Permission;
>
> **(iii)** if it is established under this agreement that the Planning Permission granted

pursuant to the Planning Application is a Satisfactory Planning Permission, the date on which the Review Period expires; and

(iv) if it is established under this agreement that the Planning Permission granted pursuant to the Planning Application is a Satisfactory Planning Permission and a Third Party Application is made within the Review Period, the date on which the Third Party Application is Finally Determined;

(b) (where *Clause x.1(b)* applies) the date which is 10 working days after the latest of the following dates:

(i) the date on which the Planning Appeal is dismissed;

(ii) if a Planning Permission is granted pursuant to the Planning Appeal, the date on which it is established under this agreement that the Planning Permission is not a Satisfactory Planning Permission;

(iii) if it is established under this agreement that the Planning Permission granted pursuant to the Planning Appeal is a Satisfactory Planning Permission, the date on which the Review Period in respect of the Planning Appeal Decision expires; and

(iv) if it is established under this agreement that the Planning Permission granted pursuant to the Planning Appeal is a Satisfactory Planning Permission and a Third Party Application is made within the Review Period, the date on which the Third Party Application is Finally Determined;

(c) (where *Clause x.1(c)* applies) the date which is [10] working days after the latest of the following dates:

(i) the date on which it is established under this agreement that the Planning Permission is not a Satisfactory Planning Permission;

(ii) if it is established under this agreement that the Planning Permission is a Satisfactory Planning Permission, the date on which the Review Period expires;

(iii) if it is established under this agreement that the Planning Permission is a Satisfactory Planning Permission and a Third Party Application is made within the Review Period, the date on which the Third Party Application is Finally Determined.

(d) (where *Clause x.1(d)* or *Clause x.1(e)* applies) the date which is 10 working days after the latest of the following dates:

(i) the date on which the Review Period expires;

(ii) if a Third Party Application is made within the Review Period, the date on which the Third Party Application is Finally Determined.

x.3 Notwithstanding the provisions of *Clause 11.1* and *Clause 11.2*, the Planning Long Stop Date shall in no circumstances be later than [DATE].]

Schedule 1

1. The design must take account of the vision for the facility as set out in the invitation to tender dated [ ] 2020 at section 1.1. 1

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.