



Business Plan

Financial Year 2022/2023

Version 1.11

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Contents Page

1.0 Executive Summary

2.0 Performance in the period

2.1 Operational & Delivery

2.2 Financial Performance

3.0 Overview of Business Plan for 2022/2023

3.1 Approach

3.2 Staffing for Business Plan

3.3 Summary of Business Plan

3.4 Exeter City Living Sites

3.5 Housing Revenue Account Developments

3.6 Exeter City Council Sites

4.0 Loan Arrangements

5.0 Management Report setting out the business objectives for the next three Financial Years

6.0 Risks

Appendices

A Exeter City Council Site disposals to Exeter City Living

B Sales Methodology

C Option Agreement Sites & Model Option Agreement

D Key Inputs and Assumptions

E Financial Statements

1.0 Executive Summary

The past couple of years have been challenging and have presented unprecedented circumstances for the development process in the UK. However, despite the challenges brought by the Covid19 Pandemic and the impacts of Brexit, Exeter City Living has achieved some good successes in the period, including:

- The sale of three new homes at Anthony Rd were completed to the Housing Revenue Account
- The nine new homes at Thornpark Rise (Hockings Green) were completed and sold to the Housing Revenue Account
- Planning Approval was secured for 42 new homes at Clifton Hill and a Contractor appointed for the Pre-Construction Stage, working through risks and prices, and looking to start on site during the first quarter of 2022
- Planning Approval was secured for 92 new homes at Vaughan Road (The Gardens, Whipton) and a Contractor appointed for the Pre-Construction Stage, working through risks and prices, and looking to start on site during the first quarter of 2022
- A Contractor has been shortlisted to commence the construction of 24 homes at Hamlin Gardens on behalf of the Housing Revenue Account with Exeter City Council acting as the Development Agent

This Business Plan for 2022/2023 is seeking Shareholder approval to move into an ambitious phase of delivery, with over 426 new homes in the development pipeline on nine Exeter City Living sites and a further 150 to 250 new homes on four Housing Revenue Account Sites. Our vision and plans for the coming years as contained within this Business Plan and agreed with the Exeter City Living Board will require a substantial funding commitment but offers the opportunity for Exeter City Council to lead net zero urban regeneration in the city centre, providing much needed housing and in doing so seeking to protect the green ridge line of the city from development.

In order to achieve this vision, Exeter City Living need to grow and invest in its in-house resources and have the comfort that it has a sustainable and long-term pipeline of developments to support this investment.

A number of key matters will need Shareholder support to drive the implementation of this Business Plan, namely:

- Where Exeter City Council have sole control over a site, Exeter City Living will be the Developer of Choice for that site and given first refusal to develop it.
- Exeter City Living will work with the City Surveyor to identify sites for development and it is expected that further sites will be included with Exeter City Living's future Business Plan for 2023/2024 where they will be considered by the Council.
- Exeter City Living will continue to work with the Housing Revenue Account and be their Developer of Choice for their new build and asset remodelling ambitions which form part of their Business Plan for increasing affordable homes across the city.
- Exeter City Council agreement to dispose of the sites identified in Appendix A of this document to Exeter City Living.
- For the Shareholder not to change or withdraw any of the sites identified in Appendix A of this Business Plan.
- Agree to a site disposal 'Sale Methodology' between Exeter City Council and Exeter City Living as outlined in Appendix B of this Business Plan, to streamline the development process.
- Agree to a standard Option Agreement between Exeter City Council and Exeter City Living.
- Agreement for Exeter City Living to recruit in accordance with the Business Plan.

During the last 12 months, Exeter City Living were appointed by the Shareholder to prepare a Business Case for the potential formation of a Residential Property Trading Entity. This work was completed in December 2021 with recommendations that will go to Full Council in February 2022. The financial modelling contained within this Business Plan is in isolation of the creation of any Residential Property Trading Entity being formed. Should the Council approve the Residential Property Entity and for it to form part of the Business Objectives of Exeter City Living in future years, the financial modelling will need revising to reflect this.

Our funding requirements for the year 2022-2023 will not seek approval for any new loans, but we will look to draw down the previously approved loan for Clifton Hill of £15.64m. Our Plan then estimates that further loans will be drawn down during 2023-24 of £9.8m & £13.0m in 2024-25.

In addition to this, the level of gearing in the business (debt to equity ratio) will need to be addressed, with an injection of equity capital and this will be dealt with as an addendum to the Business Plan.

The end of the 2022-2023 year should see Clifton Hill and Vaughan Road well into the build stage on site, along with planning submissions made or imminent on 5 of our 6 sites in the development stage. This should lead to sales in 2023-2024 and seeing us with a small profit at Operating Profit level (before finance costs). Further sales in 2024-2025 and contributions from the development pipeline Affordable turnover should see our first Profit Before Tax.

The Board of Exeter City Living have identified the key risks facing the business and have identified mitigations to successfully manage the risks. The Board are comfortable that the risks, where Exeter city Living are in control, can be managed satisfactorily in order to deliver this Business Plan.

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2.0 Performance in the period

2.1 Operational & Delivery

Our ambition for our trading period 2020 – 2022 has been to deliver with purpose and to upscale Exeter City Living’s ambitions to address the needs and aspirations of Exeter City Council, specifically in relation to:

- Delivering a positive return of development profit within a development delivery timeline
- Upscaling development ambitions and working with the Housing Revenue Account to deliver more homes of mixed tenure to meet the diverse housing needs of the city
- Delivering some sites with Build to Rent new homes to support the activity of an emerging Residential Property Division of the Exeter City Group – in order to create a long-term revenue income for the council
- Being a vehicle to deliver the Council’s ambitions around the Climate Emergency and Net Zero ambitions, as set out in the Liveable Exeter and Net Zero Exeter 2030 Plans
- Contributing to Exeter City Council’s Covid 19 recovery initiative.

Exeter City Living’s performance against these ambitions have been hampered significantly by the ongoing Covid 19 Pandemic, coupled with the impacts of Brexit and the consequential challenges these have placed on the whole development delivery process. From the delays caused to the design process, public consultation, and engagement initiatives, planning procedures and consultancy teams with intermittent lock downs. From a construction perspective, there has been unprecedented fluctuations in material costs and labour availability, and this has impacted budget and starts on sites.

Notwithstanding these unprecedented challenges there has been progress on several key Exeter City Living developments:

- 1) The sale of three new homes at Anthony Rd were completed to the Housing Revenue Account
- 2) The nine new homes at Thornpark Rise (Hockings Green) were completed and sold to the Housing Revenue Account
- 3) Planning Approval was secured for 42 new homes at Clifton Hill and a Contractor appointed for the Pre-Construction Stage, working through risks and prices, and looking to start on site during the first quarter of 2022
- 4) Planning Approval was secured for 92 new homes at Vaughan Road (The Gardens, Whipton) and a Contractor appointed for the Pre-Construction Stage, working through risks and prices, and looking to start on site during the first quarter of 2022
- 5) A Contractor has been shortlisted to commence the construction of 24 homes at Hamlin Gardens on behalf of the Housing Revenue Account with Exeter City Council acting as the Development Agent

Exeter City Living has adopted a ‘Workstage Protocol’ with the Shareholder and progressed through Work stages 0 and 1. This involved assessing several Exeter City Council sites to determine their feasibility for development, examining their development potential and business justification. This work included undertaking planning and massing assessments, high level financial appraisals, specialist surveys, stakeholder engagement and risk reviews. This work was carried out on the following sites:

- Belle Isle
- Mary Arches
- Bonhay Meadow
- Exeter Water Sports / Canal Basin Site
- Cathedral & Quay Car Park
- [REDACTED] *

*This is not an Exeter City Council site but one which has a restrictive covenant from Exeter City Council on it.

The findings of these Work stages have been shared with the Shareholder and authority has been given for Exeter City Living to proceed into Workstage 2 for all the above listed sites. Workstage 2 is where the sites will be further appraised, options developed, and design suitably progressed for planning submission in 2022 & 2023.

Other Exeter City Living activity undertaken during the Business Plan period includes:

- 1) Acting as Development Agent for the anticipated delivery of a new Depot to replace the existing Depot at Belle Isle
- 2) Acting as Development Managers for the proposed alterations to Wonford Community and Leisure Centre
- 3) Acting as Development Managers for the proposed new columbarium at Higher Cemetery
- 4) Completing Workstage 0 reports for the Housing Revenue Account, examining the feasibility for new council housing development on 10 Sites
- 5) Undertaking a feasibility and development proposal for developing air space above existing low rise council housing blocks to enable more homes to be delivered across the city

During the course of the Business Plan period, Exeter City Living prepared a number of bids for One Public Estate Government Funding submitted as part of a wider Devon County Council proposal. The bids related to specific funding streams; One Public Estate Land Release Funding and One Public Estate Brownfield Land Release Funding. The bids related to anticipated costs for preparing public sector land for residential development to be paid to Exeter City Council but for work enacted by Exeter City Living as part of development activity between 2021 and 2025. In all instances the bids submitted by Exeter City Living were successful and the table below provides a summary of the funds allocated:

Site	Amount
Vaughan Rd (The Gardens, Whipton)	£ 795k
Clifton Hill	£ 425k
Belle Isle	£ 673k
Bonhay Meadow	£1,010k
Mary Arches Car Park	£1,310k
Exeter Water Sports / Canal Basin	£ 600k
Cathedral & Quay Car Park	£2,373k
Total	£7,186k

These grants are much welcomed to assist in the delivering on such challenging brownfield sites – the figures identified above have been included within the financial modelling and development appraisals for the sites as described later in this document.

2.2 Financial Performance

The financial performance of the business is generally influenced by three main factors (Staff Costs, Sales and Developments). We consider each in turn below, in the two business plan years 20/21 and 21/22.

Financial Year 2020 / 2021

Staff Costs:

Overall expenditure on staff and consultants was lower than planned due predominantly to our anticipated development pipeline progressing more cautiously than anticipated while client design briefs and governance gateways with our new Work Stage procedures were agreed. We were unable to recruit our new Development Director in the period, with only a small pool of candidates identified by our appointed recruitment agency. Recruitment of our Operations Director and part-time Sales & Marketing Manager were successful, having worked previously as consultants. Consequently, Exeter City Living relies heavily on consultants to take projects forward.

Sales:

The sale of 3 homes at Anthony Road completed in the year to the Housing Revenue Account which both benefited the Housing Revenue Account and eased the sales uncertainty created in the initial stages of the Pandemic. The sale of Thornpark Rise was delayed due to the Contractor's non-performance in clearing defects. Completion subsequently took place in September 2021. Income shortfall was also experienced from expected Development Agency Fees for Vaughan Road where a different delivery model was eventually agreed, and delays on Belle Isle Depot and Hamlin Gardens. All factors that have been outside the control of Exeter City Living.

Developments:

Overall, the biggest influence on our financial position is the progress through the development & planning stages of our schemes, with Clifton Hill experiencing last minute planning delays and delays to Vaughan Road while the delivery method was being agreed. The feasibility and viability work on other sites has also been slower than anticipated while Client Briefs and new work stage approval gateways were being agreed.

The table below summarises the costs / expenditures in the approved Business Plan 2020/2021 and the actual result for the FY 2020/2021:

Item	Approved Business Plan	Actual Result	Variance	Comments
Staff & Interims	£866,477	£622,993	-£243,484	Reduced spend on employment and consultants due to delayed development programme accounts for £243k.
Office & IT	£104,779	£39,531	-£65,248	"Office Running costs" are lower by £65k with Budgeted IT set-up costs of £26k not spent because of the pandemic.
HR Legal & Finance	£139,742	£161,718	£21,976	Additional HR and recruitment costs of £48k are off-set by reduced Marketing and PR costs of £28k.
Total Overheads	£1,110,999	£824,242	-£286,757	Overhead spend to the end of March is £824k which is £287k less than Budget.
Development Costs				Development expenditure significantly below Plan with £2m land completion at Clifton Hill delayed due to planning, deposits for other sites not exchanged and expenditure across other sites not made due to progression of sites and viability works not instructed.
Servicing Debt & Principle	£661,275	£661,275	-£0	Loan interest and capital repayments in line with Plan
Total Expenditure				
Homes Volume	12	3	(9)	Homes completions behind budget with the Sale of Thornpark Rise delayed due to contractor defects.
Income	£4,877,000	£1,138,940	-£3,738,060	Turnover are behind budget due to the Sale of Thornpark Rise delayed due to contractor defects. Development Agency Fees are behind budget due to the change of delivery method for Vaughan Road, and delays on Belle Isle Depot and Hamlin Gardens.
Profit Before Tax / (Loss)				Actual loss lower than Business Plan
Borrowings	£9,032,114	£9,032,114	-£0	Loans drawn down as per Business Plan
Surplus (Deficit) Loan Balance	£502,464	£3,552,466	£3,050,002	Increased cash at bank due to reduced expenditure

Financial Year 2021 / 2022 - Forecast

Staff Costs:

The forecasted position is broadly similar to the previous year, with recruitment of Development Managers underway at the time of the report. The potential saving for employing staff rather than consultants could equate to a circa 25-30% saving. The search for a Development Director continues.

Sales:

The sale of Thornpark Rise took place in September 2021 following completion of defects. Income anticipated from Affordable Housing contracts not achieved due to delayed starts on site.

Developments:

The current year is a repeat from 2020-21 with development progress now starting to build up momentum, whilst delivery on site is now subject to navigating through a desperately stretched contractor supply chain with increased tender prices being experienced due to inflationary and supply pressures caused by the pandemic and Brexit.

The table below summarises the costs / expenditures in the approved Business Plan 2021/2022 and the forecast out-turn for the current FY 2021/2022:

Item	Approved Business Plan	Forecast	Variance	Comments
Staff & Interims	£948,838	£653,821	-£295,017	Reduced spend on employment and consultants due to delayed development programme accounts for £295k.
Office & IT	£80,617	£80,405	-£211	
HR Legal & Finance	£132,857	£148,143	£15,286	Additional HR and recruitment costs of £32k are off-set by reduced Marketing and PR costs of £17k.
Total Overheads	£1,162,312	£882,369	-£279,942	Forecast Overhead spend to the end of March is marginally above last year (£824k) which is £280k less than Budget.
Development Costs				Development expenditure significantly below Plan due to progression of sites well behind expected position.
Servicing Debt & Principle	£1,483,919	£661,275	-£822,644	New loans not required.
Total Expenditure				
Unit Volume	18	9	(9)	Unit completions behind budget with the Sale of Thornpark Rise taking place and no other completions from other sites
Income	£5,014,000	£3,296,000	-£1,718,000	
Profit Before Tax / (Loss)				Overhead savings compensating for loss of profit from sites not progressing
Borrowings	£27,515,698	£8,819,508	-£18,696,189	No new loans drawn down in year, however, equity loan from shareholder added
Surplus (Deficit) Loan Balance	£383,455	£44,973	-£338,483	No new loans drawn down in year.

3.0 Overview of Business Plan for 2022/2023

3.1 Approach

Exeter City Living is coming of age and seeking Shareholder approval to move into an ambitious phase of new home delivery underpinned in part by the successful One Public Estate financial support of £7.2 million. Our vision and plans for the coming years as contained within this Business Plan and agreed with the Exeter City Living Board will require a substantial funding commitment but offers the opportunity for Exeter City Council to lead net zero urban regeneration in the city centre, providing much needed housing and in doing so seeking to protect the green ridge line of the city from development.

Exeter City Living's vision and plan as agreed with its Board:

"It is the intention that over the next three years the business builds capability (internally and externally) in delivering the sites identified in the Business Plan. This capability includes proving and demonstrating viable delivery of 'net zero' housing on Brownfield Sites. Once this Net Zero Urban Regeneration has been successfully delivered, years 3-7 will look to mainstream roll out and the upscaling of this concept/model - attracting partners, where appropriate and contributing towards the 12,000 new homes to be delivered as part of the Liveable Exeter Vision".

To achieve this vision, Exeter City Living need to grow and invest in its in-house resources and have the comfort that it has a sustainable and long-term pipeline of developments to support this investment. To this end, to achieve certainty of a development pipeline, where Exeter City Council have sole control over a site, Exeter City Living will be the Developer of Choice for that site and given first refusal to develop it. Exeter City Living will work with the City Surveyor to identify sites for development, and it is expected that further sites will be included with Exeter City Living's future Business Plan for 2023/2024 where they will be considered by the Council.

Exeter City Living will also continue to work with the Housing Revenue Account and be their Developer of Choice for their new build and asset remodelling ambitions which form part of their Business Plan for increasing affordable homes across the city.

In the short term this will require the Shareholder's support by granting authority to the City Surveyor to enter into negotiations and sell the sites identified in Appendix A of this Business Plan. By approving this Business Plan, the Council agree to dispose of the sites identified in Appendix A to Exeter City Living. And in order for Exeter City Living to be able to support the recruitment and staffing model included in this Business Plan there is a requirement for the Council not to change or withdraw any of the sites identified in Appendix A of this Business Plan.

To effectively deliver the ambitions of the Shareholder and the approved pipeline of developments within the timeframes of this Business Plan aligned to the contractual obligations of the One Public Estate Funding, there is a need for a streamlining of processes. To assist with this, there is a requirement for the Council to agree to a site disposal 'Sale Methodology' between Exeter City Council and Exeter City Living as outlined in Appendix B of this Business Plan. If a Development Agreement is necessary this will be substantially in the form contained within Appendix B.

Aligned with a sales methodology and in order to simplify and speed up the land transfer process between Exeter City Council and Exeter City Living, there is a requirement for there to be an agreed Option Agreement between Exeter City Council and Exeter City Living. Appendix C of this Business Plan contains a Form of Model Option Agreement with terms substantially in the form contained within this Appendix which will be adopted unless a Conditional Land Contract approach is adopted with terms substantially in the form of the Conditional Land Contract contained within this Appendix.

Lastly, in order to deliver Exeter City Living's overall vision, we need to resource and staff the Company. Our internal staff team will increase from 6 (includes EO, SE & GM secondments) to 12 as detailed further in the next section of this document. To maintain this increased resource in order for Exeter City Living to deliver this Business Plan ambitions, a commitment to the funding and expenditure outline in this plan is critical. This would include the provision to recruit in accordance with the Business Plan in a committed development pipeline.

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3.2 Staffing for Business Plan 2022/2023

Development Management

Exeter City Living has to date been predominantly resourced using external consultants. This principle whilst flexible, is expensive costing us circa 26% more than if we employed direct. Now there is more certainty on the development pipeline, we plan to recruit our own in-house team to take the company forward whilst still being able to call on our consultant team for additional capacity as required. We do not envisage at this stage, replacing our external consultants to carry out our Project Employers Agent/ Project Manager and Quantity Surveyor roles, which are project specific, but initially to employ Development Managers reporting to the Managing Director until a Development Director which we have struggled to secure, is appointed. This will give us greater control and consistency whilst keeping our cost base to a minimum.

We currently have 10 projects, 8 of which are at similar development stages and two which are about to start on site. We envisage this will require a minimum of two Development Managers. These are currently being managed by QSPM, Baker Ruff Hannon and Kirkham Board equating to at least 10 days per week.

Following our initial appraisal work of 10 Housing Revenue Account sites, we are expecting to be instructed to progress 4 of these sites initially with a further 2 sites to follow. There is the potential of an additional major phase at Vaughan Road to also bring into our pipeline if approved. This pipeline will require at least one additional Development Manager initially with potential for further external support depending on timescales.

Sales, Marketing and Communications

We currently employ a part time Sales & Marketing Manager, who will not have sufficient capacity once more sites are progressing on site. We also use external consultants to manage our Website and Communications requirements. We want our Marketing and Communications activities to be brought in-house to provide improved control and greater capacity for equivalent costs. We are therefore seeking to recruit a PR manager along with an Administration and Digital Marketing Graduate Trainee to reinforce this function along with backing up the Sales and Administration functions. The Sales Manager role will also need to expand into a full-time role, or a further part time resource added in due course.

Human Resources

We currently employ, on a consultancy basis, an HR Manager, as required. We intend to increase this input to 2 days a week, to cover recruitment and development of our HR requirements. Whilst this would look to be sufficient coverage at this time we will look to agree if Exeter City Council's HR offering can supplement our requirements, other than payroll.

ICT

Having employed a part time IT Manager from Strata for one day a week to set up our independent IT system, we lost this service when this individual left Strata. Fortunately, this ongoing support function has been contracted out to a company negating the need for a separate IT manager at this stage. We have however, made allowance for additional IT set-up requirements which will undoubtedly become necessary, such as a Sales and Customer Services Data Base system.

3.3 Summary of Business Plan 2022/2023

The detailed figures and financial information for Business Plan for 2022/2023 are contained within the Financial Statements in Appendix E, however the diagram below aims to identify how the FY 2022/2023 Business Plan sits within the overall timeline for the development & sales of the projects contained within the Business Plan:



The overall Business Plan cost and revenue headings for FY 22/23 can be summarised as:

Category	Costs	Income	TOTALS
Staff & Interims	£1,085,998		£1,085,998
Office & IT	£102,473		£102,473
HR, Legal & Finance	£267,572		£267,572
Developments		£4,672,011	
Servicing Debt & Principal	£1,716,021		£1,716,021
Total		£4,672,011	

Further detail supporting the above summarised costs and incomes is contained in Appendix E.

Please note, the 'Income' section is the total of the housing sales (circa £4.5m from Vaughan Road), plus income from Development Agency to the Housing Revenue Account & Exeter City Council for work on Hamlin Gardens and the new Depot for Belle Isle (circa £128k)

3.4 Exeter City Living Sites

We have included below a table which identifies the delivery programme for the Exeter City Living sites and the number of homes created on site.

Summary table of new homes to commence on site this year:

Scheme	Start on Site	Practical Completion	Total Homes Forecast
Clifton Hill	Spring 22	Spring 24	42
Vaughan Rd	Spring 22 (enabling works started Nov.21)	Autumn 24	32 + 60 Housing Revenue Account
Sub-total (A)			134

Sites to be a further appraised, options developed, and design progressed during 2022/2023 Business Plan year (i.e. Workstage 2 undertaken):

Site	Potential Nr Homes
Mary Arches Car Park	100
Belle Isle	32
Bonhay Meadows	92
Exeter Canal Basin	■
■■■■■■■■■■	22
Cathedral & Quay Car Park	TBC
■■■■■■■■■■	TBC
Sub-total (B)	292+

Overall Total [A + B]	426
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As can be seen from the above table, in addition to starting on site at Clifton Hill and Vaughan Rd, it is the intention to undertake Workstage 2 appraisal and design progress works on circa 7 further sites during the Business Plan year.

The works on these sites will be substantially undertaken by consultants employed on a project-by-project specific basis (such as Architects, Engineers, Project Managers, Quantity Surveyors, etc). Monies have been set aside in the Business Plan to cover the costs of the consultants and other third-party services such as geotechnical investigations, environmental surveys, and the like, as may be required. It is the intention that these sites will be progressed to Planning Application stage, where viable / possible.

3.5 Housing Revenue Account Developments

The 2022/2023 Business plan includes for Exeter City Living providing Development Agent services for the Housing Revenue Account, managing the delivery of Vaughan Rd (Housing Revenue Account element – 60 homes) and Hamlin Gardens (24 homes). In total this service will help the Housing Revenue Account provide 84 new Affordable homes into the Housing Revenue Account stock – all starting on site this year.

In addition to the above, this business plan includes that Exeter City Living will help Exeter City Council Housing Revenue Account to deliver 4 projects over the next 3 years, potentially delivering circa 150 to 250 new homes. Exeter City Living will be paid on a Cost plus 10% basis, invoicing the Housing Revenue Account monthly. Additional opportunities to the development programme are likely to evolve over time.

During the year 2022/2023 we will have the capacity, expertise and processes / tools available to help the Housing Revenue Account deliver further projects for their ambitious housing development programme.

3.6 Exeter City Council Sites

Similarly, to the Development Agent role provided to the Housing Revenue Account, Exeter City Living are providing Development Agency services to Exeter City Council to assist with progressing projects on their behalf. Our 2022/2023 Business Plan includes for the resource capacity and availability to assist the Council with projects such as Wonford Health & Wellbeing Centre, the 'New Exton Road Depot' project, the Columbarium project and any other opportunities which may arise to support the Vision and plans of the City Council.

4.0 Loan Arrangements

Exeter City Council has not had to provide any further loans in 2021 and we do not anticipate any further loans required until April 2022. The business' Cash Balance is therefore positive and funding current operational costs and the feasibility work for potential new projects.

It is anticipated that during the year 2022-2023 we will draw down the previously approved loan for Clifton Hill of 15.64m. Our Business Plan then estimates that further loans will be drawn down during 2023-24 of £9.75m & £13.0m in 2024-25.

The following projects to be progressed through to completion as the sites already are secured for development by Exeter City Council/Housing Revenue Account/Exeter City Living and subject only to formal agreement:

- a) **Vaughan Road Phase 2** (The Gardens, Whipton) will progress from the enabling works currently underway through to completion with funding for this project to be provided by stage payments from the Housing Revenue Account and stage payments from the Residential Property Company if approved.
- b) **Clifton Hill**: Land completion to take place and development work through to completion.

The following projects to be progressed through Workstage 2 and beyond to Planning submission and detailed design work providing approval to submit planning application is signed off at the end of work stage 2:

- a) **Belle Isle**: Develop further feasibility works and Planning with circa £█ spend in year (Fees to Planning circa £█)
- b) **Exeter Canal Basin EWSA**: Develop further feasibility works, Planning and detailed design ready for start on site with circa £█ spend in year (Fees to Planning circa £█)
- c) **Bonhay Meadows**: Develop further feasibility works, Planning and detailed design work to start on site with circa £█ spend in year (Fees to Planning circa £█; land deposit £█)
- d) █: Develop further feasibility works, Planning and detailed design work to start on site circa £█ spend in year (Fees to Planning circa £█)
- e) **Cathedral & Quay Car Park**: Develop further viability options and work stage 2 £█ spend in year (Fees to complete concept design and options circa £█)
- f) **Mary Arches**: Develop further feasibility works and to Planning submission with circa £█ spend in year (Fees to Planning circa £█)

Workstage 1 viability work for 4 Housing Revenue Account development sites to be progressed when instructed with fees covered by Housing Revenue Account on monthly basis thereby requiring very little funding requirements.

If, as expected, the opportunity for the development of other City Council sites is presented during 2022/2023, this will be considered in an addendum to the Business Plan, where details of any loan / funding requirement will be identified. It is understood that any addendum (& additional funding / loan requirement) will be subject to the necessary Exeter City Council governance review, including consideration at Full Council.

Summary of loan position :

	Previous Years (£m)	Current Financial Year 2021/2022 (£m)	Business Plan Year 2022/2023 (£m)	2023/2024 (£m)	2024/2025 (£m)	TOTALS (£m)
A p p r o v e d	Draw down in 2018 / 2019					
	Draw down in 2019 / 2020					
	Draw down in 2020 / 2021, 2021 / 2022					
	Planned draw down in 2022 / 2023 - Previously Approved for Clifton Hill					
N e w	New Loans for draw down in 2023 / 2024					
	New Loans for draw down in 2024 / 2025					
	Interest on loans					
	Loan Interest Payments					
	Loan Principle Repaid					
	Year-End Loan Balance					

Teckal Status

Exeter City Living's status as a Teckal company allows Exeter City Council to award contracts directly to Exeter City Living without a procurement process, it is therefore important for both parties that Teckal status is retained. Within the Management Agreement between Exeter City Council and Exeter City Living, entering into a contract or a variation to the terms of business which has the potential to compromise the status of the Exeter City Living as a Teckal compliant company is a Reserved Matter for the Council (Schedule 3, Reserved Matter for Council, 1.10 and 1.11).

According to government guidance the test for Teckal status is that 80% of the activities of Exeter City Living be carried out for Exeter City Council, it is understood by Exeter City Living that this 80% is measured against turnover in the first instance (over a 3-year period if available and if not using reasonable projections). Should Exeter City Living not pass the 80% test, all contracts awarded to Exeter City Living by Exeter City Council would be subject to challenge.

The proposed activity of this Business Plan accords with the above teckel requirements.

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5.0 Management Report setting out the business objectives for the next three Financial Years

The Management Agreement requires the Business Plan to include a Management Report setting out the business objectives for the next three financial years.

This is a summary of the information contained in Appendix E in relation to the financial matters over the next three years:

INCOME STATEMENT	2021/22 £'m	2022/23 £'m	2023/24 £'m	2024/25 £'m
Turnover				
Cost of Sales				
Gross Profit				
Admin Costs				
Operating Profit				
Interest costs				
Profit/Loss Before Tax				
BALANCE SHEET				
WIP				
Debtors				
Cash				
Current Assets				
Current Liabilities				
Long Term Loans				
Total assets less Liabilities				
Shareholder funds				
CASHFLOW STATEMENT				
Cash at Bank opening Balance				
Sales Receipts				
Loan Receipts				
Total Receipts				
Build/construction costs				
Admin costs				
Loan interest payments				
Loan repayments				
VAT payments/(receipts)				
Total Payments				
Cash at Bank Closing Balance				

Please note the table includes notional amounts for the construction costs, loans and sales values / income on the sites listed a) to f) in section 4.0. This is included for illustration & consistency with the original Exeter City Living Business Case, at this stage. It is expected that the detailed costs, required loan / funding for construction and the anticipated sales for these sites will be within the 2022/2023 Business Plan.

In these uncertain times of Covid 19 we are continually assessing the impact of the economy on the finances of our developments (whether they are Covid 19 related, BREXIT related, etc) these significant 'events' can have large impacts on land values, forecast capital returns, sales, etc. We constantly strive to be as agile and recession proof as we can, looking for opportunities to de-risk the land transfer, capital cost or sales process / values (an example being the ability to 'flip' market sale housing to Affordable if needed). It is this dexterity and collaboration with the Council & Housing Revenue Account that will allow sites to be progressed with a higher level of confidence than would otherwise be possible in these times of economic instability.

The table below summarises the potential benefits to Exeter City Council based on the Plan for the FY 2022/2023:

Activity	General Fund	Housing Revenue Account	Total
Capital Receipts (Land)			
Premium on Interest Received 2022/23	£711,262		£711,262
Existing Costs Transferred out for Staff & Office	£86,497		£86,497
CIL Income	£300,000		£300,000
			£0
TOTAL	£1,097,758		

Total Premium on Interest from 2018/19 to FY 2022/23:

Premium on Interest Received	General Fund	Housing Revenue Account	Total
2018/19	£29,260		£29,260
2019/20	£120,687		£120,687
2020/21	£279,615		£279,615
2021/22	£273,502		£273,502
2022/23	£711,262		£711,262
Total Premium on Interest Received	£1,414,325		£1,414,325

In addition to the above capital receipts and Exeter City Council Premium (profit) on interest received, it is notable that other benefits will accrue to the Council through Exeter City Living developing schemes, such as New Homes Bonus and Exeter City Council 'incomes' received from Exeter City Living for seconded staff, office accommodation, Service Level Agreements for 'in-house' Exeter City Council services, etc. It is not possible to quantify these for the scale of development being considered in this business plan, however they are not incidental and will have a positive impact on the finances & economy of the City Council.

Further to the financial modelling and development of the sites identified in this business plan, it is Exeter City Living's intention to add additional sites over the coming years. Whilst these exact sites cannot be confirmed at this stage, it is anticipated that the objectives for the next three years can be summarised as:

- FY 2022 / 2023:** The year will see the commencement of works on site of Clifton Hill and the start of the main build works for Vaughan Road (The Gardens, Whipton) following the completion of the demolition and enabling works in 2022/23. Investing in and growing our in-house resources will be a priority to give us the capacity to deliver the long-term development pipeline. This will be critical to a continuation of controlled growth at Exeter City Living, focus on providing 'profit for purpose' to support the Council's longer term economic, social and environmental aspirations. The pipeline presented in this business plan will be progressed through the development appraisal process (Work Stage 2) targeting being able to submit a planning application for 5 of the 6 sites. There will be limited turnover achieved in this year with payments for the Affordable homes for the Housing Revenue Account at Vaughan Road the only main income source other than development agency income from the Belle Isle Depot relocation and Hamlin Gardens project. We also anticipate commencing the development process on a number of Housing Revenue Account sites, once instructed.
- FY 2023 / 2024:** This year will see first sales completions from Clifton Hill and on-site presence ramping up with potentially 200+ homes being on site during the year. This should also see a small profit at Operating Profit level (Profit before Finance Costs)
- FY 2024 / 2025:** During this year, sales should increase with circa £■■■ of income, generating Exeter City Living's first year of profit before tax. We expect further projects will be progressed through the pipeline in the year preceding 2024/2025, so that a pipeline of projects is in place to continue delivering new homes in Exeter in 2025/2026 and beyond.

6.0 Risks

In recommending this Business Plan to Full Council for approval, we wish to bring to the Council's attention (in its capacity as Shareholder) the key, or headline risks associated with this Business Plan as identified by the Board of Exeter City Living. The Board have also identified mitigation strategies.

RISKS

1. **Construction industry at lower productivity** since Brexit and Covid 19 pandemic with supply chain, labour, materials and haulage challenges. These continue to cause uncertainty in terms of increased costs, delays in procurement, delays on site and completion times.
2. **Housing market failure** associated with both economic recession and or inflation. Potential for slowdown in sales, reduction in property values and sales receipts and affordable housing delivery rates.
3. **Delivery protracted by Exeter City Council approval** / key stage processes: need to stick to rationalised, leaner approaches to support accelerated delivery – avoiding delays caused by Exeter City Council approval/process.
4. **Certainty of supply of sites** from Exeter City Council for development of market/mixed tenure housing and from Housing Revenue Account for development of affordable housing and place making.
5. **Ability to attract competitive contractors and future development partners**
6. **Ability to maintain an ongoing pipeline of developments** and to deliver profits at planned margins
7. **Ability to deliver at pace** that sufficiently and proportionally supports the Growth Plan of 12,000 homes. 200 starts per annum by Exeter City Living from 2024?
8. **Ability to recruit & retain** a growing staff team to meet the needs of Exeter City Living.
9. **Securing acceptable and timely Planning consents** and agreement of Design review Panel
10. **Increased dependence on grant funding** for affordable housing or other subsidy to address viability of schemes (as and when available)

11. **Potential impact of reintroduction of Housing Revenue Account borrowing restrictions** and therefore ability to purchase s106 affordable housing from Exeter City Living and/or continue to procure council housing from Exeter City Living

12. **Continued treasury management:** meeting the Council's funding plans, management of increased borrowing, gearing, loan covenants, debt redemption and expected future dividends. Securing share capital from the Shareholder as equity may be required to meet HMRC or other statutory requirements.

13. **Public Works Loan Board interest rate movements** or restrictions by Government impacting on the cost of borrowing for the Council and Exeter City Living

14. **One Public Estate Land Release Fund / Brownfield Land Release Fund:** Full value of Release Fund works not undertaken prior to the deadline in the Funding Agreement, thereby reducing the grant obtained.

MITIGATIONS

- (Future) limits on annual exposure to sales to within approved levels of liquidity
- (Future) loan covenant compliance
- Minimum agreed operating margins
- Sale of planned or unsold stock to the Residential Property Company part of the Exeter City Living Group or Housing Revenue Account
- Individual scheme approvals both at Project and Start on Site stages demonstrating risk mitigation measures and exit strategy to be employed in the event of market failure (in addition to the financial appraisal, project plan, design review and sales/ marketing plan).
- (Future) stress testing a drop in sales values, a slowdown in sales rates, interest rate rises, build cost increases above assumed Building Cost Indices (BCI).
- The Board of Exeter City Living maintain a confidential Risk register detailing the prevailing Strategic risks. Regular Individual Project reports highlight scheme specific risks to the Board.
- Agreed sales methodology between Exeter City Council & Exeter City Living
- Agreed Exeter City Council site option agreements
- Agreed first refusal of all Exeter City Council controlled sites

- Agreed Developer of choice for all Housing Revenue Account new build and estate rationalisation opportunities.
- With regards to the One Public Estate Land Release Fund / Brownfield Land Release Fund risk, further works will be undertaken during Workstage 2 of the funded projects in order to consider sequencing, programme and opportunities with Exeter City Council to promote completion within the Funding Agreement deadline.

The Board are comfortable that the risks, where Exeter City Living are in control, can be managed satisfactorily in order to deliver this Business Plan.

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Appendix A

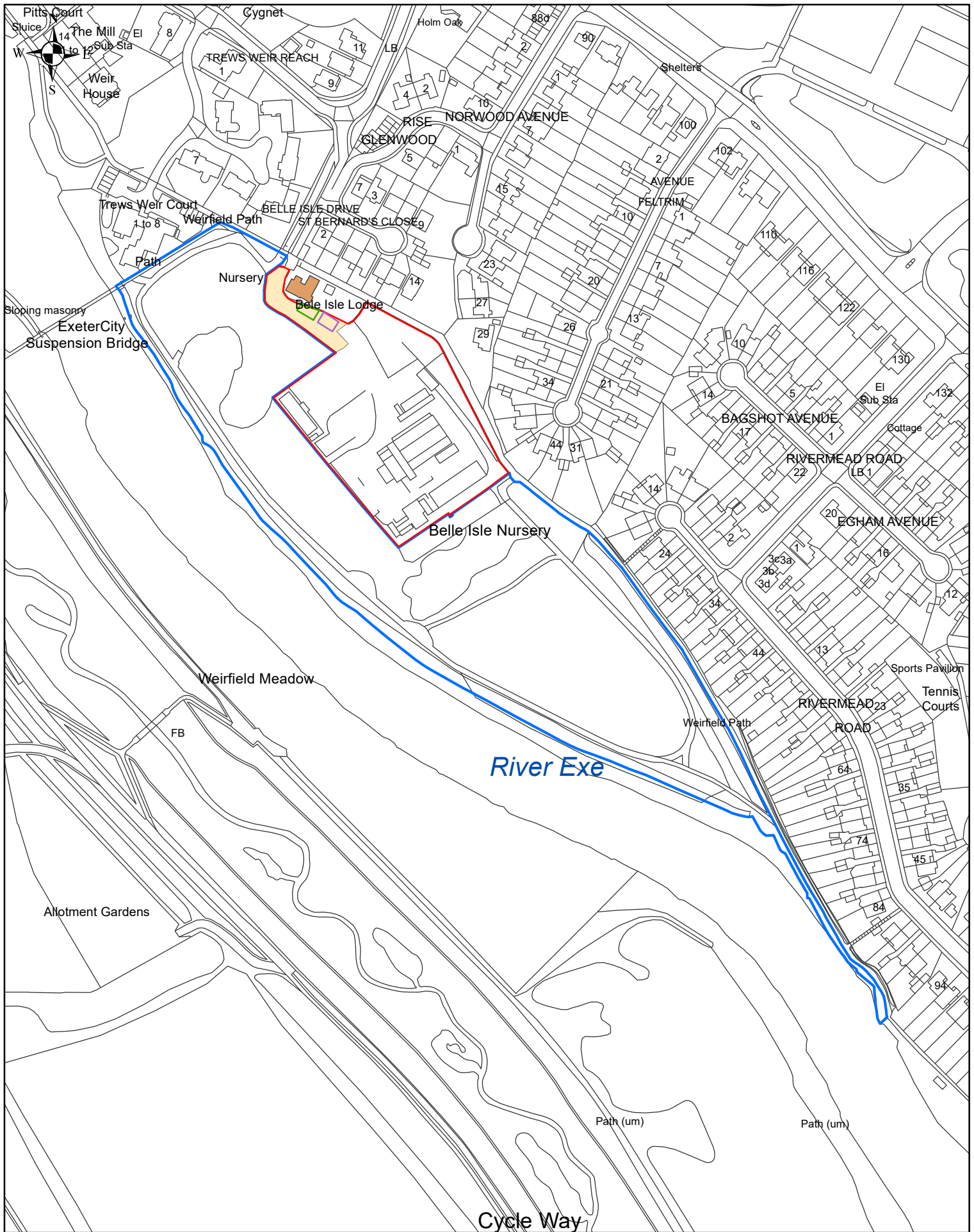
Exeter City Council Site Disposals to Exeter City Living

Belle Isle

Bonhay Meadows

Canal Basin / EWSA

Mary Arches Car Park

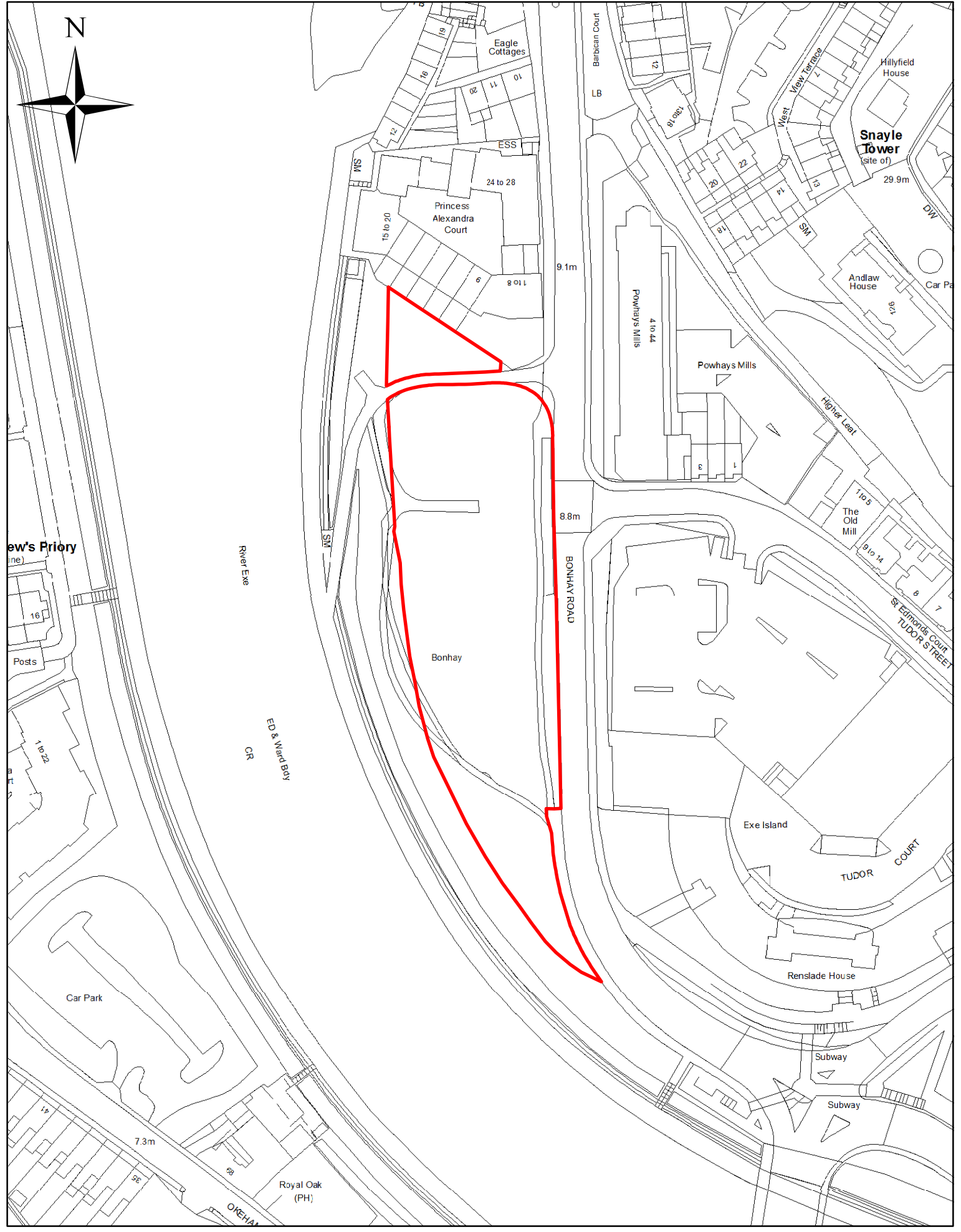


Scale: 1:2,500

Date: June 2021

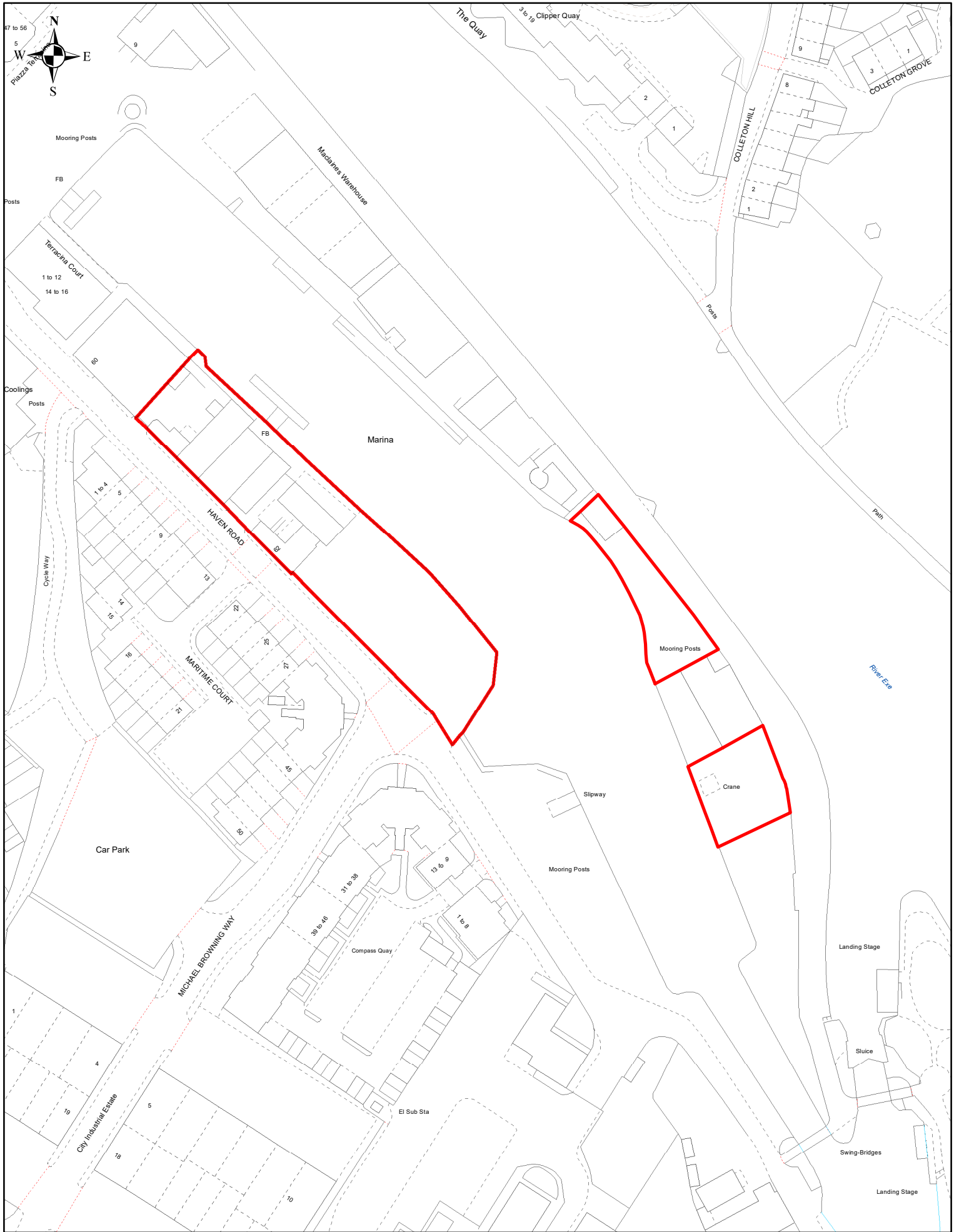
Belle Isle Depot site plan





Land at Bonhay Road

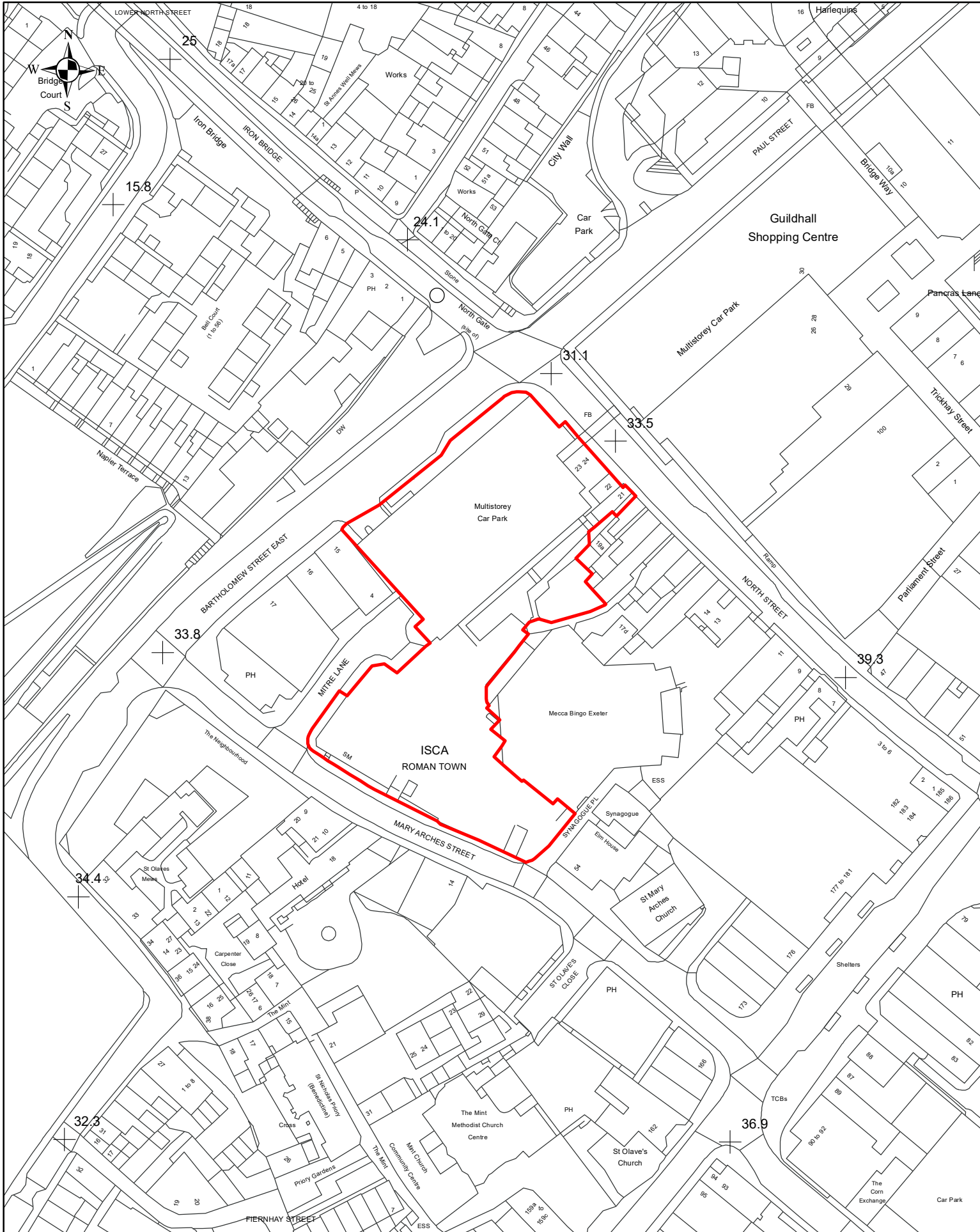
Scale: 1:1,250
 Date: April 2020



Scale: 1:1,250

Date:

Exeter Canal Basin



Scale: 1:1,250
 Date: July 2021

Mary Arches Street Car Park, Exeter



Appendix B

Sales Methodology

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Sales Methodology / Site Acquisition Methods

Where Exeter City Living is purchasing the site:

Site secured by way of Option to Purchase. The Purchase Price shall represent the market value of the Site, as assessed by a suitably experienced property surveyor, jointly appointed by the Owner (Exeter City Council) and Developer (Exeter City Living), discounted to allow for Exeter City Living's costs and risk promoting the site through the planning and feasibility process. The parties acknowledge and agree that the Purchase Price will be calculated to represent the market value of the Site on the Transfer Date with the benefit of a Satisfactory Planning Permission, constructed to Passivhaus Plus and other requirements (if any) in response to the Exeter Vision.

Land to be transferred on a freehold basis. Exeter City Council to sell Exeter City Living to lease back elements of the scheme to Exeter City Council as required

Where Development is on sites being retained by the Shareholder:

Exeter City Living enters into a Development Agreement, substantially in the form appended here undertaking the development works under licence. The Purchase Price is to be determined on the basis of total costs plus reasonable developer overheads.

DATED

DEVELOPMENT AGREEMENT

relating to

Land and premises at xxxxxx

between

Exeter City Council

and

Exeter City Living Limited

This agreement is dated

2021

Parties

- (1) EXETER CITY COUNCIL of Civic Centre, Paris Street, Exeter, EX1 1JN (**Owner**)
- (2) EXETER CITY LIVING LIMITED incorporated and registered in England and Wales with company number 11410540 whose registered office is at Civic Centre, Paris Street, Exeter, EX1 1JN (**Developer**)

BACKGROUND

- (A) The Owner owns the Property.
- (B) The Developer, at the request of the Owner, obtained Planning Permission for the construction of the Buildings on the Property.
- (C) The Owner 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.

Agreed terms

1. Interpretation

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

1.1 Definitions:

Additional Fee: ■■■ of the sums payable under the Building Contract and Development Costs in respect of the Affordable Units and ■■■ of the sums payable under the Building Contract and Development Costs in respect of the remaining units.

Affordable Units: ?? units of residential accommodation to be constructed as part of the Development [within blocks marked] on the attached plan intended to be retained by the Owner.

Target Completion Date: the date [*to be agreed*] after the date of this agreement as may be extended in accordance with clause 10.1.

Agreed Phase: a distinct phase of the Development as agreed between the Owner and the Developer pursuant to clause 6.3.

Approved Documents: all varied plans, specifications, drawings and data other than those contained within Schedule 4 "Works Drawings and Specifications" that may be required in connection with the Development including (where applicable):

- a) any variations or amendments that may be agreed by the Owner and the Developer from time to time in accordance with clause 2.1 or clause 2.4; and
- b) any minor variations permitted under clause 2.3.

[Architect: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement architect 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.]

Buildings: ?? blocks comprising ?? residential accommodation in accordance with the Planning Application.

Building Contract: a building contract entered into between the Developer and the Building Contractor for the construction of the Buildings and other structures and facilities on the Property, plus ancillary works, based upon the JCT Design and Build Contract 2016 Edition as included within Schedule 3.

Building Contractor: [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 (not to be withheld or delayed unreasonably) .

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 or an Agreed Phase (as the case may be) is practically complete according to the terms of the Building Contract.

CIL: the Community Infrastructure Levy introduced by sections 205-225 of the Planning Act 2008 payable in respect of the Development.

Client: the client as defined by the CDM Regulations.

Collateral Warranty: a deed of collateral warranty substantially in the appropriate form set out in Schedule 1 to this agreement with such amendments as may be approved by the Owner (not to be withheld or delayed unreasonably) .

Construction Phase Plan: the construction phase plan required by the CDM Regulations.

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

Defects Liability Period: the defects liability period or rectification period for the making good of defects or other faults in the Works under the Building Contract.

Design Sub-Contractors: all sub-contractors of the Building Contractor having a design responsibility in relation to the Works under the Building Contract.

Developer's Solicitor: Service Lead, Legal Services of Exeter City Council, Civic Centre, Paris Street, Exeter, EX1 1JN, (reference ???) or such other legal representatives for the time being as may be notified in writing by the Developer to the Owner.

Development: the construction of the Buildings on the Property by the carrying out of the Works pursuant to the Planning Permission.

Development Costs: the costs reasonably and properly incurred in connection with the Development (by the Developer or the Owner) in accordance with this agreement including (without limitation):

- a) the costs of preparing the Approved Documents;
- b) the costs of seeking to obtain or obtaining any release from a third party of any easement, covenant, right or other interest in or over the Property;
- c) the costs of seeking to obtain or obtaining the Requisite Consents;
- d) the costs of seeking to obtain or obtaining any grant from a third party of any easement or other right for the benefit of the Property;
- e) the costs of negotiating, entering into and complying with any Planning Obligation;
- f) the costs of CIL and S106 commuted sum payments;
- g) the costs of obtaining any order for the stopping up or diverting of any highway, bridleway, footpath or sewer and the costs of implementing the order;
- h) the costs of carrying out the Works;
- i) the fees of the Professional Team;
- j) any finance charges, fees and interest paid on any loan or other sum to finance the Development;
- k) the costs of insurance in accordance with clause 9.1;
- l) any rates, supplements, taxes, levies, duties, charges or other outgoings;
- m) the costs of the provision of water, electricity and other utilities during the Development Period;
- n) the costs of taking any actions or proceedings against the Building Contractor or any member of the Professional Team to enforce performance of their respective obligations;
- o) the legal and estate agent's fees and disbursements payable upon the actual sale of the Property or, the fees and disbursements payable on a notional sale of the Property; and
- p) any irrecoverable VAT due on supplies of goods and services.

Development Period: the period from and including the date of this agreement up to and including the Practical Completion Date or the Final Practical Completion Date (as appropriate).

[Employer's Agent: [NAME] of [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.

Final Practical Completion Date: the date of issue of the Certificate of Practical Completion in respect of the final Agreed Phase which is completed.

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

LRF Funding: grant funding from the Land Release Fund managed by One Public Estate to assist to release land for housing development.

LRF Works: the works against which LRF Funding is payable, namely demolition, surface water attenuation, substation and noise and air quality mitigation works.

Longstop Date: [?????? Years from the date of this Agreement].

[M&E Engineer: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement mechanical and electrical engineer for the time being by the Developer, with the approval of the Owner, in relation to this agreement.

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.

Owner's Accountant: The Owner's City Treasurer or such other person as may be appointed for the time being by the Owner and such appointment notified to the Developer in writing .

Owner's Solicitors: Service Lead, Legal Services, Exeter City Council, Civic Centre, Paris Street, Exeter, EX1 1JN (reference ???) or such other legal representatives for the time being as may be notified in writing by the Owner to the Developer.

Owner's Representative: the Owner's City Surveyor or a representative of the Owner's Housing Revenue Account team or such other person as may be appointed for the time being by the Owner in relation to this agreement and such appointment notified to the Developer in writing

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 Works.

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 detailed planning permission dated [????] from Exeter City Council under reference number ?????? for the construction of ?? dwellings.

Practical Completion Date: the date stated in the Certificate of Practical Completion or the Final Certificate of Practical Completion (as applicable).

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 Owner, 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 Owner, be appointed for the time being in connection with the design or management of the Development.

Property: the freehold property at ??????????, Exeter and shown edged red on the plan attached to this agreement and being part of the property registered at HM Land Registry with title absolute under title numbers DN?????? .

[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].]

Requisite Consents: building regulation approvals, by-law approvals, 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 as contemplated by the terms of the Planning Permission.

[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].]

VAT: value added tax chargeable in the UK.

Working Day: any day that is neither a Saturday, Sunday, a bank holiday or a public holiday in England, nor a day between 22nd December in one year and 2nd January in the year next following (both days inclusive) .

Works: the works described in the Building Contract and the Approved Documents.

- 1.2 Clause, Schedule and paragraph 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 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.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Any reference to the **Owner** includes the Owner's successors in title, or permitted assigns.
- 1.9 A reference to a statute, statutory provision or subordinate legislation is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** excludes fax and email.
- 1.12 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.13 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.14 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.15 Unless this agreement otherwise expressly provides, a reference to the **Property** or the **Development** is to the whole and any part of it.

- 1.16 Any reference to the Owner's **consent** or **approval** being required is to a consent or approval in writing which must be obtained before the relevant act is taken or event occurs.
- 1.17 For the avoidance of doubt the Owner has entered into this agreement in its capacity as freehold owner of the Property only and nothing contained in this agreement shall in any way fetter or limit the Owner's other rights, duties and obligations in its capacity as a local authority.
- 1.18 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.
- 1.19 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

2. Approved documents

- 2.1 The Developer shall procure that the Approved Documents are prepared and submitted to the Owner for approval within 7 Working Days of issue to the Owner. Should no comments be provided by the Owner within 7 Working Days of issue then approval shall be deemed to have been received (such approval not to be unreasonably withheld or delayed)
- 2.2 The Developer shall not (subject to clause 2.3 and clause 2.4) substantially vary, alter, add or remove anything from the Approved Documents without the Owner's consent such consent not to be unreasonably withheld or delayed.
- 2.3 The Developer may make minor variations to the Approved Documents without the Owner's consent provided that:
- (a) the variations are insubstantial and immaterial;
 - (b) the variations are in accordance with the Planning Permission, the Requisite Consents and any statutory requirements;
 - (c) any substitute materials used are of an equal or better quality and suitability to those originally specified;
 - (d) the variations do not incur additional expense or delay the completion of the Works; and
 - (e) the Developer informs the Owner of the variations promptly.

2.4 The Owner (acting reasonably) may, after proper and detailed consultation with the Developer, instruct the Developer in writing to vary the Approved Documents and the Developer shall procure that any such variation is implemented as a variation under the Building Contract. The Owner shall pay the value of any such variation as calculated in accordance with the provisions of this Development Agreement.

3. Requisite consents

3.1 Whenever appropriate, the Developer shall apply for and use reasonable endeavours to obtain the Requisite Consents.

3.2 The Developer shall keep the Owner informed as to progress in obtaining the Requisite Consents and shall promptly supply copies of any that are obtained.

3.3 The Developer shall (if reasonable in all the circumstances) appeal against the refusal of any Requisite Consent, or take such other steps in order to carry on with the Development as may be reasonably required by the Owner.

3.4 The Developer shall negotiate any Planning Obligation with the relevant authority subject to the Owner's approval (not to be withheld or delayed unreasonably) as to its terms. The Owner shall, at the request of the Developer, enter into any such Planning Obligation.

3.5 If any third party has the benefit of any easement, covenant, right or interest or other constraint in or over the Property that may:

- (a) prevent or hinder the progress of the Development; or
- (b) adversely and materially affect the use or enjoyment of the Property as contemplated by the terms of the Planning Permission;

then the Developer shall endeavour to negotiate with the third party for its release. The Owner shall enter into any requisite deed or agreement with the relevant third party subject to the Owner approving its terms (approval not to be withheld or delayed unreasonably) .

3.6 If it is desirable or necessary to obtain the grant of any easement or right for the benefit of the Property from any third party:

- (a) for the carrying out of the Development; or
- (b) for the use and enjoyment of the Property as contemplated by the terms of the Planning Permission,

the Developer shall endeavour to negotiate with the third party for its grant. The Owner shall enter into any requisite deed or agreement with the relevant third party subject to the Owner approving its terms (approval not to be withheld or delayed unreasonably) .

- 3.7 The Developer shall use reasonable endeavours to obtain any orders for stopping up or diverting any highways, footpaths, bridleways or sewers necessary to permit the Development to be carried out.

4. Professional team

- 4.1 The Developer confirms it has taken (or in the case of a substitute member of the Professional Team shall take) 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.
- 4.2 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.
- 4.3 The Developer shall prior to the date of this Agreement submit details of the proposed terms of the Professional Appointment of each member of the Professional Team to the Owner for approval (such approval not to be unreasonably withheld or delayed) and shall prior to the date of this Agreement supply certified copies of the actual terms of each Professional Appointment to the Owner.
- 4.4 Subject to clause 4.1, clause 4.2 and clause 4.3, the Developer shall once such of the Requisite Consents have been obtained so as to enable the Works to commence appoint the members of the Professional Team.
- 4.5 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 Owner.
- 4.6 The Developer shall endeavour to procure that each member of the Professional Team grants to the Owner 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:
- (a) 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

- (b) 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.
- 4.7 The Developer shall procure that the terms of the Professional Appointment of the Employer's Agent require it to act impartially when exercising its power to issue certificates and award extensions of time under the Building Contract.
- 4.8 The Developer shall use 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 Owner's consent (such consent not to be unreasonably withheld or delayed).
- 4.9 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 Owner if the Developer believes that any member of the Professional Team may be intending to rescind its Professional Appointment.
- 4.10 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 Owner of its intention to do so and discussing with the Owner the appointment of a suitable substitute approved by the Owner.

5. Building Contract

- 5.1 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.
- 5.2 If reasonably required by the Owner the Developer shall procure that the Building Contractor provides a parent company guarantee and/or a 10% performance bond or insolvency cover or equivalent.
- 5.3 The Developer shall (subject to clause 5.1) once such of the Requisite Consents have been obtained so as to enable the Works to commence 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 Owner.

- 5.4 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 Owner.
- 5.5 The Developer shall procure that the Building Contractor and each Design Sub-Contractor grants to the Owner 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:
- (a) 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
 - (b) provide that 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.
- 5.6 The Developer shall use reasonable endeavours to procure that the Building Contractor performs and observes all major terms of the Building Contract. The Developer agrees not to vary, waive or release any major terms of the Building Contract without the Owner's consent (such consent not to be unreasonably withheld or delayed).
- 5.7 The Developer shall immediately notify the Owner if the Developer believes the Building Contractor may be intending to rescind the Building Contract.
- 5.8 The Developer shall not terminate the employment of the Building Contractor or treat the Building Contract as repudiated without first notifying the Owner of its intention to do so and discussing with the Owner the appointment of a suitable substitute contractor approved by the Owner.

6. Development obligations

- 6.1 The Owner grants the Developer licence for the Developer, Building Contractor, the Building Contractor's sub-contractors and the Professional Team (and those properly authorised by any of them) to enter upon the Property solely for the purpose of carrying out their respective obligations in connection with the Development.
- 6.2 The Developer shall use reasonable endeavours to ensure the Property is kept properly secured against trespassers at all times and in the event of any unlawful occupation of the Property the Owner shall take any action or proceedings against trespassers at the Developer's reasonable request and expense.
- 6.3 If the Developer wishes to carry out and complete the Development in phases it shall first provide details of those phases to the Owner for approval (such approval not to be unreasonably withheld or delayed) PROVIDED THAT the first phase must include

completion of all external works, landscaping, car parking and footpaths for the Development and complied with all pre-occupation planning requirements.

6.4 The Developer shall procure that the Development is carried out:

- (a) diligently, in a good and workmanlike manner and in accordance with good building practice;
- (b) using only good quality materials and well-maintained plant;
- (c) in accordance with this agreement, the Approved Documents, the Planning Permission and the Requisite Consents;
- (d) to the Owner's reasonable satisfaction;
- (e) in accordance with all statutory or other legal requirements and the recommendations or requirements of the local authority or statutory undertakings;
- (f) in accordance with any Planning Obligation;
- (g) in compliance with all relevant British Standards, codes of practices and good building practice;
- (h) 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[s];
- (i) in accordance with all covenants, stipulations, rights and conditions affecting the Property; and
- (j) so that on the Practical Completion Date the Development shall be fit for its intended purpose as contemplated by the Planning Permission.

6.5 The Developer shall use reasonable endeavours to ensure that during the Development Period:

- (a) no nuisance, damage or injury is caused to any person or property due to the carrying out of the Works;
- (b) any inconvenience or disturbance to adjoining or neighbouring owners, occupiers or members of the public is kept to a reasonable minimum;
- (c) the Property is secured at all times so as to prevent unauthorised entry so far as is possible;
- (d) no signs or advertisements are displayed on the Property without the Owner's consent other than those giving the names and roles of the Developer, the Building Contractor and the members of the Professional Team;
- (e) the Property is kept tidy and clear of rubbish and no goods or materials are deposited or stored on the Property which are not required within a reasonable time for the carrying out of the Works;

- (f) no soil, gravel or other minerals are removed from the Property except to the extent necessary for the carrying out of the Works;
- (g) 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;
- (h) the Buildings, whilst in the course of construction, are kept in good repair and condition;
- (i) on the Practical Completion Date, the Property or the Agreed Phase to which the Certificate of Practical Completion relates (as appropriate) is left in a clean and tidy condition, with all unused materials and plant, equipment and temporary structures having been removed; and
- (j) the Owner's reasonable instructions for the removal of valuable, historical or other items of interest found on the Property are observed.

6.6 The Developer shall:

- (a) employ appropriate staff or external assistance to provide necessary administrative services in respect of the Development;
- (b) coordinate or procure coordination of the Professional Team;
- (c) keep the Owner's Representative regularly informed as to progress of the Works;
- (d) without prejudice to **Error! Bookmark not defined.Error! Reference source not found.**, promptly notify the Owner's Representative of any material problems or delays in the performance of the Building Contract together with the Developer's recommendations for overcoming and/or mitigating them;
- (e) give at least 7 Working Days' notice to the Owner's Representative of all meetings to be held in connection with the progress of the Works and permit the Owner's Representative to attend and to make representations; and
- (f) promptly supply the Owner's Representative with a copy of all reports, certificates and any other information reasonably required by the Owner's Representative and shall provide access (after the giving of a reasonable period of notice) to all correspondence and other written materials relating to the Development.

6.7 The Developer shall remove, repair or replace any materials or works which in the Owner's Representative's reasonable opinion are inadequate or unsuitable for their intended purpose or which are not, in accordance with the Approved Documents in accordance with the Defects Response Procedure contained within Schedule 4, after receiving notice from the Owner's Representative to do so or as soon as reasonably practicable thereafter.

7. The CDM Regulations

- 7.1 The Developer and the Owner agree that the Developer is to be treated for the purposes of the CDM Regulations as the only Client.
- 7.2 The Developer agrees to undertake all the obligations of a Client in accordance with the CDM Regulations.
- 7.3 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 Owner a copy of the F10 notification and any acknowledgement from the Health and Safety Executive.
- 7.4 The Developer shall use reasonable endeavours to ensure that the Principal Designer and Building Contractor (as principal contractor and contractor) each comply with their respective obligations under the CDM Regulations.
- 7.5 The Developer shall ensure that the Principal Designer and Building Contractor are both promptly:
- (a) supplied with all relevant information required under the CDM Regulations; and
 - (b) notified of any changes relating to the Development which may have any effect on their responsibilities or duties under the CDM Regulations.
- 7.6 The Developer shall:
- (a) ensure that the Building Contractor prepares the Construction Phase Plan;
 - (b) not allow the construction phase of the Works to commence until the Construction Phase Plan is prepared;
 - (c) 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
 - (d) ensure that the Health and Safety File is prepared by the Principal Designer and is available for inspection in accordance with the CDM Regulations.

8. Inspection

- 8.1 The Owner and the Owner's Representative may enter the Property, at any time during the Development Period, after giving reasonable notice to the Building Contractor and the Developer, to inspect progress of the Works and the materials used. In entering the Property, the Owner and Owner's Representative shall not obstruct progress of the Works and shall:

- (a) not give any instructions or make any representations directly to the Building Contractor or Professional Team; and
 - (b) comply with the Developer's and Building Contractor's health and safety and site rules.
- 8.2 The Developer shall procure that any reasonable instructions or representations made to the Developer by the Owner or the Owner's Representative that comply with the terms of this agreement are promptly dealt with.
- 8.3 The Developer shall regularly inspect or procure the inspection of the Development and procure that any defects, shrinkages or other faults in the Buildings and ancillary works that appear during the carrying out of the Works are promptly remedied.

9. Insurance

- 9.1 From the date of the Building Contract's Site Possession Date, the Developer shall insure, or shall procure that the Building Contractor insures, the Works, against specific perils in the joint names of the Owner, the Developer and the Building Contractor. The Developer shall keep the Works so insured or procure that they are kept so insured until the Practical Completion Date.
- 9.2 In the event of any loss or damage to the Works, the Developer shall procure that their reinstatement or replacement is carried out diligently and with all reasonable speed. The Developer shall apply the proceeds of the insurance towards such reinstatement or replacement.
- 9.3 Without prejudice to the indemnity in clause 14.2, the Developer shall maintain, or procure that the Building Contractor maintains, insurance in respect of injury to or death of any person or loss or damage to any real or personal property for an indemnity of not less than £5,000,000 for any one occurrence or series of occurrences arising out of the same event until Practical Completion of the Works.
- 9.4 The Developer shall require that the Building Contractor and each member of the Professional Team and each Design Sub-Contractor, as a condition of its appointment, maintains professional indemnity insurance cover with a reputable insurer for an amount not less than that stated in Schedule 2. The insurance cover must be maintained for a minimum of 12 years following the Practical Completion Date, provided that such insurance is available at commercially reasonable rates and terms.
- 9.5 The Owner may at any time request documentary evidence that the insurance policies required by this clause are being maintained including, if required by the Owner, an original letter from the Developer's insurers confirming:
 - (a) the insurance currently in force; and

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

If the Developer fails to provide such evidence within 10 Working Days of the Owner's request, then the Owner may effect such insurance itself and recover the cost of doing so from the Developer.

- 9.6 The Developer and the Owner mutually agree not knowingly to do or permit anything to be done that may render any insurance policy void or voidable.

10. Extensions of time and liquidated damages

- 10.1 The Target Completion Date shall be extended:

- (a) commensurate with any extensions of time properly allowed by the 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;
- (b) 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
- (c) in the event that the Owner breaches the terms of this agreement or varies the Approved Documents in accordance with clause 2.4 so as to delay the completion of the Works.

- 10.2 If the Developer fails to procure that the Practical Completion Date occurs on or before the Target Completion Date, it shall pay the Owner liquidated damages properly incurred and paid under the Building Contract from the Target Completion Date up to and including the Practical Completion Date. The parties confirm that this rate represents a genuine pre-estimate of the Developer's loss.

11. Practical completion

- 11.1 The Developer shall procure that:

- (a) the Employer's Agent gives at least 5 Working Days' notice to the Owner's Representative of its intention to inspect the Development for the purposes of issuing the Certificate of Practical Completion. The Owner's Representative may attend the inspection and make representations to the Developer (but not to representatives of any other parties present on the Property at that time) ; and
- (b) without fettering the discretion of the Employer's Agent in carrying out its duties under the Building Contract, the Employer's Agent takes proper consideration of any representations that are made when considering whether to issue the

Certificate of Practical Completion in accordance with the terms of the Building Contract;

provided that the Employer's Agent shall not issue the Certificate of Practical Completion where any defects or snagging items remain which would in the opinion of the Employer's Agent prevent occupation of the Development for residential purposes.

- 11.2 The Developer shall ensure that the Employer's Agent gives a copy of the Certificate of Practical Completion to the Owner immediately after its issue, together with a copy of any accompanying snagging list.
- 11.3 If the Owner believes that the Employer's Agent's decision to issue a Certificate of Practical Completion is incorrect or that the certificate ought to have been qualified, the Owner may notify the Developer within 2 Working Days giving details of the Owner's objections. The Owner 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 to arbitration in accordance with clause 19. The Developer shall take whatever action, if any, which may be agreed with the Owner (acting reasonably) or is required by the arbitrator.
- 11.4 The Developer shall within two weeks after the Practical Completion Date:
- (a) deliver to the Owner the Approved Documents, the Requisite Consents, Construction Phase Plan, the Health and Safety File, two sets of as-built drawings, an Energy Performance Certificate for each dwelling, all necessary Passivhaus certification, NHBC Buildmark or similar for each dwelling and safety certification for all installations;
 - (b) to the extent that copyright licences have not already been granted in accordance with clause 4.6 or clause 5.5, endeavour to procure the grant or assignment to the Owner of a copyright licence in the same terms as set out in clause 4.6 and clause 5.5 in respect of the designs and documents referred to above in clause 11.4(a); and
 - (c) endeavour to take any other steps required to ensure the Owner has the rights to use the documents referred to above in clause 11.4(a).

12. Defects liability

- 12.1 During the Defects Liability Period the Owner shall and the Developer may (insofar it is able without interfering with the rights of any occupiers of a dwelling within the Development) 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.

- 12.2 The Owner and/or the Developer (as the case may be) shall prepare a list of all defects, shrinkages or other faults in the Works and give it to the Building Contractor within the time limits specified by the Building Contract.
- 12.3 The Developer shall use reasonable endeavours to ensure that the Building Contractor's obligations to remedy defects, shrinkages or other faults in the Works during the Defects Liability Period are enforced and that all such defects, shrinkages or other faults in the Works are remedied promptly in accordance with the Building Contract.

13. Payment

- 13.1 The Owner shall pay the Developer by monthly payments based on certified valuations issued against completed works under the Building Contract Development Costs and Additional Fee as follows:-
- (a) the Developer shall submit monthly applications for payment to the Owner identifying the works completed since the previous application for payment;
 - (b) following receipt of the application for payment the Owner shall issue a certified valuation of the works or shall notify the Developer within 3 days if it disputes any such application and any such dispute shall be resolved in accordance with clause 19;
 - (c) following receipt of a certified valuation from the Owner the Developer may submit an invoice for payment;
 - (d) the Owner shall pay such invoice within 10 Working Days of the date of application.
- 13.2 The Developer agrees that if the Owner is or becomes a "contractor" under the HMRC Construction Industry Scheme, the Owner shall make any deductions from sums due to the Developer required by the HMRC Construction Industry Scheme. The Developer agrees with the Owner that it shall comply with the HMRC Construction Industry Scheme.
- 13.3 Within ?????? Weeks after the Practical Completion Date, the total amount of the Development Costs shall be certified by the Owner's Accountant whose decision shall be final and binding on both parties except in relation to any manifest error of law or fact.
- 13.4 The Owner shall pay the Developer the Additional Fee (if any) on
- (a) the date that the total amount of the Development Costs is certified in accordance with clause 13.3; or

The Additional Fee (if any) shall be due for payment on the date the Developer supplies the Owner with an invoice specifying the Additional Fee that the Developer considers

shall become due on the payment due date and the basis on which that sum is calculated. The final date for payment for the Additional Fee (if any) shall be the date 14 Working Days after the Practical Completion Date.

13.5 For any sum due from the Owner to the Developer:

- (a) no later than one day after payment becomes due, the Owner shall notify the Developer of the sum that the Owner considers to have been due at the payment due date in respect of the payment and the basis on which that sum was calculated;
- (b) subject to clause 16(b) and unless the Owner has served a notice under clause 13.5(c), it shall pay the Developer the sum referred to in the Owner's notice under clause 13.5(a) (or, if the Owner has not served a notice under clause 13.5(a), the sum referred to in the Developer's invoice) (in either case in this clause 13.5 the **notified sum**) on or before the final date for payment of each invoice;
- (c) not less than one day before the final date for payment (in this clause 13.5, the **prescribed period**), the Owner may give the Developer notice that it intends to pay less than the notified sum (in this clause 13.5, a **pay less notice**). Any pay less notice shall specify:
 - (i) the sum that the Owner considers to be due on the date the notice is served; and
 - (ii) the basis on which that sum is calculated; and
- (d) if the Owner fails to pay an amount due to the Developer by the final date for payment and fails to give a pay less notice under clause 13.5(c), simple interest shall be added to the unpaid amount from the final date for payment until the actual date of payment. This shall be [calculated on a daily basis at the annual rate of 5% above the base rate set from time to time by the Bank of England's Monetary Policy Committee or any successor to it **OR** [INTEREST RATE]]. The parties acknowledge that the Owner's liability under this clause 13.5(d) is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

14. Warranties and indemnities

14.1 The Developer shall use reasonable endeavours to procure that the Building Contractor warrants and undertakes that:

- (a) it has surveyed the Property and is satisfied to the best of its knowledge and belief that the Property is physically suitable for the Development;
- (b) 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 6.4(g) and clause 6.4(h);

- (c) on the Practical Completion Date the Development shall be fit for its intended purpose as contemplated by the Planning Permission; [and]
- (d) to the best of its knowledge and belief it has disclosed all material information related to insurance of the Development pursuant to clause 9 and such information is true and complete in all material respects.

14.2 The Developer shall indemnify the Owner against all liabilities, costs, expenses, claims, damages, losses, demands, actions and proceedings suffered or incurred by the Owner arising out of or in connection with any breach or negligent performance or non-performance of the Developer's obligations in this agreement, limited to any claims for death, personal injury or damage to property occurring during the Works.

15. Termination

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

- (a) 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);
- (b) 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;
- (c) a person becomes entitled to appoint a receiver over the assets of the Developer or a receiver is appointed over the assets of the Developer;
- (d) the making of an application to court for, or obtaining, a moratorium under Part A1 of the Insolvency Act 1986 in relation to the Developer (being a company);
- (e) 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 10 Working Days;
- (f) 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 **Error! Bookmark not defined.****Error! Reference source not found.** to clause 15.1(e) (inclusive);
- (g) the Developer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

- (h) the Developer (being a company) is struck off from the Register of Companies;
or
- (i) the Developer otherwise ceases to exist.
- (j) [ANY OTHER ALTERNATIVE TRIGGER EVENTS TO BE SPECIFIED]

15.2 Without affecting any other right or remedy available to it, if the Practical Completion Date has not occurred by the Longstop Date then the Owner may, if in all the circumstances then prevailing it is reasonable to do so, 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.

16. Consequences of termination

If notice is served by the Owner pursuant to clause 15.1 or clause 15.2:

- (a) the Developer's licence to enter the Property shall immediately end;
- (b) the Owner 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 (provided that, notwithstanding clause 13.5, if the Developer is subject to any of the events described in **Error! Bookmark not defined.** to clause 15.1(i) (inclusive) after the prescribed period in clause 13.5(c), the Owner shall not be required to pay the Developer the notified sum (as defined in clause 13.5(b));
- (c) the Owner 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
- (d) the Developer shall assign all rights of action it may have against the Building Contractor and the Professional Team to the Owner absolutely and the Developer hereby irrevocably appoints the Owner 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.

17. Alienation

17.1 The Developer may not without the Owner's consent 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.

17.2 The Owner may not without the Owner's consent assign, charge or part with its interest in this agreement or the Property except as permitted by clause 17.3.

17.3 The Owner may sell the freehold of the whole of the Property prior to the Practical Completion Date to a buyer of at least equal financial standing subject to that buyer entering into a deed of covenant with the Developer containing covenants by that buyer to observe and perform the outstanding obligations on the part of the Owner contained in this agreement and providing a bond or guarantee which the Developer (acting reasonably) considers satisfactory in respect of all such liabilities as that buyer has assumed by virtue of the deed of covenant and/or its ownership of such freehold .

18. Actions and proceedings

18.1 The Developer shall diligently pursue any actions or proceedings reasonably required by the Owner, pursuant to any relevant provision of this Agreement, against the Building Contractor or a member of the Professional Team in order to enforce the performance of their respective obligations.

18.2 The Developer shall hold any sums recovered as a result of such actions or proceedings on trust for the Owner, to the extent appropriate pursuant to any relevant provision of this Agreement, and shall if appropriate apply them in remedying the situation that gave rise to the action or proceedings.

18.3 The Developer shall take account of any requests or proposals reasonably made by the Owner in relation to the conduct of any such actions or proceedings.

19. Disputes

In the event of any dispute arising between the parties:-

19.1 the Owner's Representative and the Developer's Representative shall meet in person or communicate by telephone or virtual meeting within 5 Working Days of the date of the written notification in order to resolve the dispute and agree any necessary action and timescales for compliance;

19.2 if the Owner's Representative and the Developer's Representative are unable to resolve the dispute or if the agreed actions and/or timescales are not complied with the dispute shall immediately be referred to the Owner's Deputy Chief Executive and the Developer's Managing Director who shall meet in person or communicate by telephone or virtual meeting within 5 Working Days of the date of referral in order to resolve the dispute and agree any necessary actions and timescales for compliance;

19.3 In the event that a dispute cannot be resolved following the process in clause 19.1 and 19.2 the parties may refer the matter for alternative dispute resolution

Provided that this dispute resolution process is without prejudice to any right which the Developer or the Owner has to refer a dispute to adjudication under the Housing Grants, Construction and Regeneration Act 1996.

20. Notices

20.1 Any notice given under this agreement must be in writing and respect all requirements of this clause 20 .

20.2 Any notice given under this agreement must be:

sent by Royal Mail's Special Delivery or Recorded Delivery services (or, if discontinued, their nearest replacement service) .

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

(a) to the Owner at:

Civic Centre, Paris Street, Exeter, EX1 1JN

marked for the attention of: [NAME/POSITION];

or at the Owner's Solicitors quoting the reference ???;

(b) to the Developer at:

Civic Centre, Paris Street, Exeter, EX1 1JN

marked for the attention of: Emma Osmundson

or at the Developer's Solicitor, quoting the reference ?????;

or as otherwise specified by the relevant party by notice in writing to the other party so as to arrive with that other party no less than seven Working Days before the notice in question was sent .

20.4 Any change of the details in clause 20.3 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:

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

(b) the date seven Working Days after deemed receipt of the notice.

20.5 Any notice given in accordance with this clause 20.1 shall be deemed to have been received:

(a) , at 11 am on the second Working Day after posting.

- 20.6 In proving delivery of a notice or document, it shall be sufficient to prove that:
- (a) a delivery receipt was signed or that the notice or document was left at the address; or
 - (b) the envelope containing the notice or document was properly addressed and posted by one of the means specified in clause 20.2.

20.7 A notice given under this agreement shall not be validly given if sent by fax or email.

20.8 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.

21. LRF Funding Obligations

21.1 The parties agree and acknowledge that some of the Development Costs may be funded from a grant to be received by the Owner as LRF Funding which is conditional on the Property being released for housing purposes no later than ??????? 202?.

21.2 The Developer will use its reasonable endeavours to complete the LRF Works prior to ??????? 202?.

21.3 The Developer will provide information to the Owner to enable the Owner to report to One Public Estate on the key milestones as follows:-

- (a) procurement of infrastructure works contractor commencement date;
- (b) commencement of LRF Works;
- (c) completion of LRF Works;
- (d) date the Property is to be released;
- (e) expected start date on site; and
- (f) expected development end date.

21.4 The LRF Funding is only available for the LRF Works up to the following maximum sums:-

(a)	Demolition	£?????
(b)	Surface water attenuation	£?????
(c)	Substation	£?????
(d)	Noise and air quality mitigation	£?????

22. Value added tax

All sums due and payable under this agreement for the supply of goods and services are exclusive of any VAT arising in respect of them and, subject to the receipt of a valid VAT invoice, a sum equal to such VAT shall be payable in addition.

23. No partnership

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

24. 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.

25. 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.

26. Jurisdiction

Subject to clause 18, 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.

Schedule 1 Collateral warranties

Schedule 2 Professional indemnity insurance

Role	Identity	Required level of insurance

Schedule 3 The Building Contract Terms and Conditions

Schedule 4 Works Drawings and Specifications

EXECUTED as a DEED by)
affixing the COMMON SEAL of)
EXETER CITY COUNCIL)
in the presence of:-)

Service Lead, Legal Services
Team Leader - Housing & Litigation
Team Leader – ECL, Contracts, Procurement & Licensing
Team Leader – Property, Planning & Non-contentious

EXECUTED as a DEED by)
EXETER CITY LIVING LIMITED)
acting by a Director)
in the presence of:-)

Appendix C

Option Agreement Sites, Model Option Agreement & Conditional Contract

Option Agreement sites:
Cathedral & Quay Car Park



**Option Agreement &
Conditional Agreement attached**

DATED

OPTION AGREEMENT

relating to

[description/address of property]

[between/among]

Exeter City Council

and

Exeter City Living Limited

CONTENTS

CLAUSE

1. Interpretation.....	2
2. Option	5
3. Planning.....	5
4. Extensions to the Option Period	6
5. Planning Obligations.....	7
6. Owner's undertakings	7
7. Title deduction	8
8. Exercise of the Option	9
9. Sale and purchase.....	9
10. Conditions	9
11. Vacant possession	10
12. Transfer.....	10
13. Completion.....	11
14. Disposals and restriction	11
15. Owner's rights as Local Authority.....	12
16. VAT	13
17. Entire agreement.....	13
18. Notices	13
19. Third party rights	15
20. Disputes	15
21. Governing law	15
22. Jurisdiction	15

SCHEDULE

Schedule 1	The Option Notice.....	16
Schedule 2	[Documents of title referred to in clause 7.1]	17

This agreement is dated [DATE]

Parties

- (1) Exeter City Council of Civic Centre Paris Street Exeter EX1 1JN [(**Owner**)
- (2) Exeter City Living Limited incorporated and registered in England and Wales with company number 11410540 whose registered office is at Civic Centre Paris Street Exeter EX1 1JN [(**Developer**)

BACKGROUND

- (A) The Owner owns the property at [ADDRESS] and has agreed to grant the Developer an option to buy it in accordance with the terms of this agreement.
- (B) The Developer wishes to apply for planning permission for [PROPOSED DEVELOPMENT] on the property [and adjoining property].

Agreed terms

1. Interpretation

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

1.1 Definitions:

Application: an application for Planning Permission.

Completion Date: the date Ten Working Days after the date of service of the Option Notice.

Contract Rate: 4% per annum above the base rate from time to time of Barclays Bank Plc.

Deed of Covenant: a deed of covenant with the Developer containing covenants in the same terms as the obligations of the Owner in this agreement with such minor modifications as the Developer may agree.

Deposit: £ [AMOUNT] (exclusive of VAT if applicable).

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

Developer's Conveyancer: [NAME, ADDRESS, E-MAIL, REFERENCE] [or such other conveyancer as may be notified from time to time in writing to the Owner].

Developer's Representative: [NAME, POST].

Disposal: a disposition within the meaning of [section 205 of the Law of Property Act 1925 **OR** section 27(2) of the Land Registration Act 2002] of the whole or any part or parts of the Property].

Long Stop Date: [DATE].

Option: the option granted by the Owner to the Developer by this agreement.

Option Notice: written notice exercising the Option [in accordance with the terms of this agreement **OR** in the form set out in Schedule **Schedule 1** to this agreement].

Option Period: subject to extension in accordance with clause **4**, the period [of [NUMBER] [days **OR** weeks **OR** months]] from the date of this agreement [up to and including [DATE]].

Option Sum: £1 (exclusive of VAT if applicable).

Owner's Conveyancer: [NAME, ADDRESS, E-MAIL , REFERENCE] [or other such conveyancer as may be notified from time to time in writing to the Developer]

Owner's Representative: [NAME, POST].

[Owner's Retained Land: [the freehold property at [ADDRESS] registered at HM Land Registry with title [absolute] under title number[s] [NUMBER[S]]]

OR

the freehold property at [ADDRESS] shown edged in [COLOUR] on the plan attached to this agreement and being the remainder of the land (excluding the Property) registered at HM Land Registry with title [absolute] under title number[s] [NUMBER[S]]

OR

the freehold property at [ADDRESS] being the whole of the land comprised in a conveyance dated [DATE] between [PARTIES]

OR

the freehold property at [ADDRESS] shown edged in [COLOUR] on the plan attached to this agreement and being the remainder of the land (excluding the Property) comprised in a conveyance dated [DATE] between [PARTIES]

OR

the freehold property at [ADDRESS] shown edged in [COLOUR] on the plan attached to this agreement.]

Part 1 Conditions: Part 1 of the Standard Commercial Property Conditions (Third Edition - 2018 Revision) and **Condition** means any one of them.

Part 2 Conditions: Part 2 of the Standard Commercial Property Conditions (Third Edition - 2018 Revision).

Planning Obligation: a statutory obligation that (in the Developer's [reasonable] opinion) is necessary for or will assist in:

- a) obtaining Planning Permission; or
- b) carrying out the Proposed Development

including an obligation under section 106 of the Town and Country Planning Act 1990, section 38 or section 278 of the Highways Act 1980 or section 104 of the Water Industry Act 1991.

Planning Permission: [detailed **OR** outline] planning permission for the Proposed Development.

Property: [the freehold property at [ADDRESS] registered at HM Land Registry with title [absolute] under title number[s] [NUMBER[S]] shown more particularly delineated in red on the plan attached to this agreement

Proposed Development: [DESCRIPTION OF PROPOSED DEVELOPMENT] on the Property [and adjoining property].

Purchase Price: [INSERT SUM /MECHANISM]

Satisfactory Consent: a consent in accordance with the requirements of the restriction referred to in clause 14.2 and the requirements of HM Land Registry from time to time.

VAT: value added tax [or any equivalent tax] chargeable in the UK [or elsewhere].

Working Day: any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday.

Written Replies: are:

- (a) written replies that the Owner's Conveyancer has given prior to exchange of this agreement to any written enquiries raised by the Developer's Conveyancer; or
- (b) written replies to written enquiries given prior to exchange of this agreement by the Owner's Conveyancer to the Developer's Conveyancer.

1.2 Clause and Schedule headings will not affect the interpretation of this agreement.

1.3 Unless the context otherwise requires, references to clauses and Schedules are to the clauses and Schedules of this agreement.

1.4 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

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

- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 Except in relation to clause 1.10, a reference **OR** A reference to **writing** or **written** includes email.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 Any reference to the **Owner** [or to the **Developer**] includes [its **OR** their] [respective] successors in title.
- 1.10 For the purposes of the definition of **Written Replies**, **written replies** and **written enquiries** include:
- (a) any pre-contract enquiries and any replies to pre-contract enquiries that are requested or given by reference to the [SPECIFY THE STANDARD FORM OF ENQUIRIES USED, INCLUDING THE EDITION] [and include enquiries or replies so requested or given by email]; and
 - (b) the following pre-contract enquiries and replies that were sent or received by email: [SPECIFY EMAILS].

2. Option

- 2.1 On the date of this agreement the Developer will pay the Option Sum to the Owner.
- 2.2 The Owner grants the Developer an option during the Option Period to buy the Property at the Purchase Price.
- 2.3 If the Property is charged, the Owner will immediately upon request supply written evidence to the Developer that the chargee has consented to the grant of the Option and that, in exercising any power of sale or disposal under the charge, such transaction will be subject to the Option.
- 2.4 The Owner consents to the entry of an agreed notice against the Owner's title to the Property at HM Land Registry in order to protect this option agreement.

3. Planning

- 3.1 Before submitting the Application to the Determining Authority, the Developer will obtain the Owners approval to the Application, which is not to be unreasonably withheld or delayed.

- 3.2 The Developer at its own cost shall submit an Application or Applications to the Determining Authority.
- 3.3 The Developer may, at its own cost and in its sole discretion, submit further Applications and/or undertake any appeal as it sees fit, whether under a statutory appeal process or by way of judicial review, in order to obtain a Planning Permission satisfactory in all respects to the Developer.
- 3.4 The Owner will not object to the Application.

4. Extensions to the Option Period

- 4.1 Subject to clause 4.5, if Planning Permission is granted less than seven weeks before the end of the Option Period, the Option Period will be extended for a further period expiring at midnight marking the end of seven weeks from (and including) the date of receipt of the written decision notice by the Developer.
- 4.2 Subject to clause 4.5, if at the end of the Option Period the Developer is awaiting a written decision on an Application, the Option Period will be extended for a further period expiring at midnight marking the end of seven weeks from (and including) the date of receipt of the written decision notice by the Developer.
- 4.3 Subject to clause 4.5, if at the end of the Option Period the Developer has appealed against:
- (a) a deemed refusal of an Application; or
 - (b) an actual refusal of an Application; or
 - (c) a grant of Planning Permission subject to conditions unacceptable to the Developer

and has not yet received the written decision notice, the Option Period will be extended for a further period expiring at midnight marking the end of seven weeks from (and including) the date of receipt of the written decision notice by the Developer.

- 4.4 Subject to clause 4.5, if, at the end of the Option Period, an appeal is pending under section 288 of the Town and Country Planning Act 1990 **OR** an application is pending for judicial review, and the High Court has not yet issued its decision, the Option Period will be extended for a further period expiring at midnight marking the end of the [NUMBER] day from (and including) the later of:
- (a) the date that the High Court issues its decision; or
 - (b) (if the matter is remitted to the Determining Authority) the date of receipt of the written decision notice by the Developer.

4.5 Notwithstanding the provisions of clause 4.1, clause 4.2 clause 4.3 and clause 4.4, the Option Period will be extended on as many occasions as may be appropriate to take account of the terms of any one of clause 4.1, clause 4.2, clause 4.3 and clause 4.4 but shall in no circumstances be extended beyond the Long Stop Date.

5. Planning Obligations

5.1 At the Developer's request, the Owner will promptly deduce title to the Property to the Determining Authority in connection with any proposed Planning Obligation.

5.2 The Owner will enter into any Planning Obligation immediately upon request by the Developer and will execute it as a deed provided that any liabilities in the Planning Obligation are expressed to be subject to the grant and implementation of the Planning Permission and that the Developer indemnifies the Owner against all expenses and liabilities arising out of the Planning Obligation and the Owner will also (if requested) procure that any chargee of the Property enters into it.

6. Owner's undertakings

6.1 The Owner undertakes that during the Option Period it will not object to the Determining Authority against:

- (a) any Application submitted by the Developer; or
- (b) any appeal by the Developer against a deemed refusal or actual refusal of an Application; or
- (c) any appeal by the Developer against a grant of Planning Permission subject to conditions unacceptable to it; or
- (d) any appeal by the Developer under section 288 of the Town and Country Planning Act 1990; or
- (e) an application by the Developer for judicial review.

6.2 The Owner undertakes that during the Option Period it will not:

- (a) submit any planning application in respect of the Property; or
- (b) submit any planning application in respect of the Owner's Retained Land without the Developer's consent (such consent not to be unreasonably withheld); or
- (c) grant any charge, easement, right, licence, tenancy or other encumbrance affecting the Property without the Developer's consent such consent not to be unreasonably withheld).

- 6.3 The Owner grants a licence for the Developer and its agents and contractors to enter the Property at all times during the Option Period, after giving reasonable notice to the Owner, to carry out soil, water and environmental tests, inspections and surveys. The Developer will make good any damage caused to the Property as soon as reasonably practicable.
- 6.4 The Owner will supply the Developer with:
- (a) a copy of any notice, correspondence or other written material relevant to the Property or the Proposed Development as soon as reasonably practicable of receipt by the Owner; and
 - (b) full details of any event or other information relevant to the Property or the Proposed Development as soon as reasonably practicable of its coming to the notice of the Owner.
- 6.5 [OTHER OBLIGATIONS]

7. Title deduction

- 7.1 [The Owner's title to the Property has been deduced to the Developer before the date of this agreement [and commences with [DESCRIPTION OF ROOT DOCUMENT]. [The documents of title are listed in Schedule **Schedule 2** and [a marked abstract **OR** epitome **OR** certified copies] [has **OR** have] been given to the Developer.

OR

Immediately on the Developer's request made at any time during the Option Period, the Owner will deduce title to the Property [to the Developer's satisfaction, including supplying full copies of any documents not obtainable by the Developer from HM Land Registry][. **OR** and] supply a marked abstract or epitome commencing with a good root of title at least 15 years old and certified copies of the relevant documents.] The Owner will reply in writing to any requisitions from the Developer within four Working Days of their receipt.]

- 7.2 The Developer may terminate this agreement by serving written notice on the Owner at any time during the Option Period and the Owner will immediately repay the Option Sum to the Developer if:
- (a) the Developer's investigation of title; or
 - (b) the results of searches or enquiries made by or on behalf of the Developer; or
 - (c) the results of any soil, water or environmental tests, inspections or surveys; or
 - (d) the replies to any requisitions raised by the Developer

disclose a matter that in the Developer's reasonable opinion would prejudice the suitability of the Property for the Proposed Development.

8. Exercise of the Option

- 8.1 The Developer may exercise the Option at any time during the Option Period by serving an Option Notice on the Owner.
- 8.2 On the date of exercise of the Option, the Developer will pay the Deposit to the Owner.

9. Sale and purchase

- 9.1 If the Option is exercised in accordance with the terms of this agreement the Owner will sell the Property to the Developer for the Purchase Price [minus the Deposit].
- 9.2 The Owner will sell the Property with full title guarantee.

10. Conditions

- 10.1 Upon exercise of the Option, the Part 1 Conditions will be incorporated into this agreement in so far as they:
- (a) apply to a sale by private treaty;
 - (b) relate to freehold property;
 - (c) are not inconsistent with the other clauses in this agreement; and
 - (d) have not been modified or excluded by any of the other clauses in this agreement.
- 10.2 The terms used in this agreement have the same meaning when used in the Part 1 Conditions.
- 10.3 References in the Part 1 Conditions to:
- (a) "seller" mean the Owner; and
 - (b) "buyer" mean the Developer.
- 10.4 Upon exercise of the Option, the Part 2 Conditions will not be incorporated into this agreement.
- 10.5 The following Conditions are amended:
- (a) Condition 1.1.1(d) so that reference to completion date in Condition 1.1.1(d) is to the Completion Date as defined by this agreement;

- (b) 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;
- (c) Condition 1.1.1(o) so that reference to VAT in Condition 1.1.1(o) is to VAT as defined by this agreement;
- (d) Condition 1.1.1(p) so that reference to working day in Condition 1.1.1(p) is to Working Day as defined in this agreement; and
- (e) Condition 7.3 to remove the words "Subject to Condition 7.2 and"; and
- (f) Condition 9.1.1 by the deletion of the words "Completion date is twenty working days after the date of the contract".

10.6 The following Conditions will not apply:

- (a) Condition 1.1.4(a);
- (b) Condition 1.3;
- (c) Condition 1.4;
- (d) Condition 1.5;
- (e) Conditions 2.1 and 2.2;
- (f) Condition 3.2;
- (g) Condition 4.1.4;
- (h) Conditions 7.2, 7.4.1 and 7.6.2;
- (i) Condition 8.2.3;
- (j) Condition 9.2.1; and
- (k) Condition 9.8.3.

11. Vacant possession

The Property will be sold with vacant possession on completion.

12. Transfer

[The transfer to the Developer will be in the agreed form annexed to this agreement

OR

The transfer to the Developer will contain:

- (a) a declaration as to the title guarantee with which the transfer is made in the terms of clause 9;

- (b) [a grant in favour of the Developer and its successors in title, for the benefit of the Property and each and every part of it, of the following rights over the Owner's Retained Land:
[EASEMENTS OR OTHER RIGHTS];]
- (c) [a reservation in favour of the Owner and its successors in title for the benefit of the Owner's Retained Land and each and every part of it, of the following rights over the Property:
[EASEMENTS OR OTHER RIGHTS];]
- (d) [[a]covenant[s] by the [Developer **OR** Owner] in the following terms:
[RESTRICTIVE COVENANTS];]
- (e) [a covenant by the Developer by way of indemnity only, on its own behalf and on behalf of its successors in title, to observe and perform the charges, encumbrances, covenants and restrictions contained or referred to in [the property and charges registers of [TITLE NUMBERS [S] [and] [in [DESCRIPTION OF RELEVANT CONVEYANCE(S)/DOCUMENT] in so far as they are subsisting and capable of taking effect and to keep the Owner indemnified against all proceedings, costs, claims and expenses on account of any breach;]
- (f) [PLANNING OBLIGATION(S) INDEMNITY]; and]
- (g) [ANY OTHER AGREED MATTERS, FOR EXAMPLE, POSITIVE COVENANTS, DECLARATIONS]].

13. Completion

- 13.1 Completion will take place on the Completion Date.
- 13.2 On completion the Developer will pay the Purchase Price less the Deposit and the Option Sum to the Owner.

14. Disposals and restriction

- 14.1 The Owner covenants with the Developer not to make any Disposal at any time during the Option Period without first procuring that the person to whom the Disposal is being made has executed a Deed of Covenant.
- 14.2 The Owner consents to the entry of the following restriction against the Owner's title to the Property at HM Land Registry and will provide the Developer with all necessary assistance and/or documentation to permit entry of the restriction:

"No [disposition **OR** SPECIFY DISPOSITION] of the registered estate [(other than a charge)] by the proprietor of the registered estate[, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction,] is to be registered without a consent in writing signed by [Developer] of [ADDRESS] [or their personal representatives] [or [their conveyancer **OR** SPECIFY APPROPRIATE DETAILS]]."

14.3 The Developer will:

- (a) [provide Satisfactory Consent for the registration of a Permitted Disposal at HM Land Registry immediately upon receipt of a written request from the Owner;]
- (b) [following a Permitted Disposal, if reasonably required by the Owner in order to ensure that the same restriction (or a new restriction in the same terms) as the restriction referred to in clause 14.2 is not entered against the registered title to the Property (or relevant part of the Property in the case of the Permitted Disposal of part of the Property) once the disponee under that Permitted Disposal is registered as the registered proprietor of that title:
 - (i) not object to an application by the Owner or that disponee to cancel that restriction in relation to the Property (or part of the Property) disposed of under that Permitted Disposal; or
 - (ii) in relation to any application by the Owner or that disponee to withdraw that restriction, provide immediately on receipt of a written request from the Owner or that disponee a consent to that withdrawal in accordance with the requirements of HM Land Registry from time to time;]
- (c) provide Satisfactory Consent for the registration of a Disposal at HM Land Registry immediately upon receipt of a Deed of Covenant properly executed by the person to whom the Disposal is being made [provided that there are then no outstanding sums due from the Owner under the terms of this agreement]; and
- (d) apply for the withdrawal of the restriction entered against the title to the Property within [NUMBER] Working Days after the end of the Option Period.

15. Owner's rights as Local Authority

- 15.1 For the avoidance of doubt the Owner is entering into this contract as freehold owner of the Property and it is hereby agreed by the parties that nothing contained in or implied by this agreement shall prejudice or affect the Owner's rights, powers, duties and obligations in the exercise of any of its functions as a local authority (including, without limitation, as a local planning authority) and the rights, powers, duties and obligations of the Owner under all public and private statutes, byelaws, orders and regulations may be as fully and effectually exercised in relation to the Property as if the Owner was not the owner of the Property and this agreement had not been entered into by it.

16. VAT

- 16.1 Each amount stated to be payable by the Developer to the Owner under or pursuant to this agreement is exclusive of VAT (if any).
- 16.2 If any VAT is chargeable on any supply made by the Owner under or pursuant to this agreement, the Developer will pay the Owner an amount equal to that VAT, subject to the Owner supplying the Developer with a VAT invoice at the time of payment.

17. Entire agreement

- 17.1 This agreement and the documents annexed to it constitute the whole agreement between the parties and supersede[s] all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to [its **OR** their] subject matter.
- 17.2 The Owner acknowledges that in entering into this agreement and any documents annexed to it the Developer is relying upon all representations and warranties (whether made innocently or negligently):
- (a) set out in this agreement or the documents annexed to it;
 - (b) contained in any Written Replies[. **OR** ; and]
 - (c) [OTHER REPRESENTATIONS.]]

18. Notices

- 18.1 Save as provided in clause 18.6 in this clause any reference to a notice includes the Option Notice.
- 18.2 Any notice given under this agreement must be in writing and signed by or on behalf of the party giving it.
- 18.3 Any notice or any document to be given or delivered under this agreement must be:
- (a) delivered by hand; or
 - (b) sent by pre-paid first class post or other next Working Day delivery service.
- 18.4 Any notice or document to be given or delivered under this agreement must be sent to the relevant party as follows:
- (a) to the Owner at:
[ADDRESS]

[DX: [DX NUMBER]]

[Fax: [FAX NUMBER]]

marked for the attention of: [NAME/POSITION];

(b) to the Developer at:

[ADDRESS]

[DX: [DX NUMBER]]

marked for the attention of: [NAME/POSITION];

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

- 18.5 Any change of the details in clause 18.4 specified by the relevant party by notice in writing to each other party will take 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 Working Days after deemed receipt of the notice.
- 18.6 Giving or delivering a notice (other than the Option Notice) or a document to a party's conveyancer has the same effect as giving or delivering it to that party.
- 18.7 Any notice or document given or delivered in accordance with clause 18.2 , clause 18.3 and clause 18.4 will be deemed to have been received:
- (a) 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
 - (b) 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
- 18.8 In proving delivery of a notice or document, it will be sufficient to prove that:
- (a) a delivery receipt was signed or that the notice or document was left at the address; or
 - (b) the envelope containing the notice or document was properly addressed and posted by pre-paid first class or other next Working Day delivery service

- 18.9 A notice given or document delivered under this agreement will not be validly given or delivered if sent by email.
- 18.10 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.

19. Third party rights

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

20. Disputes

- 20.1 Any consent or approval required under this agreement shall not be unreasonably withheld or delayed.
- 20.2 Both parties shall take reasonable steps to co-operate with the other in complying with their respective obligations under this agreement.
- 20.3 Any dispute, controversy or claim arising out of or relating to this agreement shall be referred to the Owner's Representative and the Developer's Representative who shall meet in person or communicate by telephone within 5 Working Days of the date of the written notification in order to resolve the dispute and agree any necessary action and timescales for compliance;
- 20.4 In the event that a dispute cannot be resolved following the process in clause 19.3 the parties may refer the matter for alternative dispute resolution.

21. 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) will be governed by and construed in accordance with the law of England and Wales.

22. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales will 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 agreement has been entered into on the date stated at the beginning of it.

Schedule 1 The Option Notice

To: [OWNER/SUCCESSOR IN TITLE] at:

[ADDRESS]

[DX: [DX NUMBER]]

for the attention of [NAME/POSITION]

[SUCH OTHER ADDRESS/ DX NUMBER/ FOR THE ATTENTION OF SUCH OTHER PERSON, AS WAS LAST NOTIFIED IN WRITING BY THE OWNER/SUCCESSOR IN TITLE]

[BY HAND]

[BY PRE-PAID FIRST CLASS POST] [BY OTHER NEXT WORKING DAY DELIVERY SERVICE]

Pursuant to an Option agreement ("the Agreement") dated [DATE] made between [OWNER] and [DEVELOPER] relating to [PROPERTY]:

[DEVELOPER/SUCCESSOR IN TITLE] gives [OWNER/SUCCESSOR IN TITLE] notice of the exercise of the Option contained in the Agreement to buy the Property on the terms set out in the Agreement.

DATE:

[SIGNED BY [NAME OF DIRECTOR OR OFFICER] for and on behalf of

[DEVELOPER]

OR

Signed by [NAME OF DEVELOPER/SUCCESSOR IN TITLE]]

Schedule 2 [Documents of title referred to in clause 7.1]

Date	Description	Parties	Original or copy	Will original be handed over on completion?

SIGNED

.....

for and on behalf of the Owner

SIGNED

.....

for and on behalf of the Developer

DATED

**CONTRACT FOR THE SALE OF FREEHOLD LAND WITH VACANT POSSESSION
CONDITIONAL ON PLANNING PERMISSION**

at

[INSERT PROPERTY]

between

EXETER CITY COUNCIL

and

EXETER CITY LIVING LIMITED

This contract is dated

Parties

- (1) EXETER CITY COUNCIL of Civic Centre, Paris Street, Exeter, EX1 1JN (**Seller**)
- (2) EXETER CITY LIVING LIMITED incorporated and registered in England and Wales with company number 11410540 whose registered office is at Civic Centre, Paris Street, Exeter, EX1 1JN (**Buyer**)

Agreed terms

1. Interpretation

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

1.1 Definitions: [ADD AS APPLICABLE]

Approved Plans: all plans and drawings approved as part of the planning application or any amended version thereof.

Buyer's Conveyancer: [INSERT DETAILS (Ref:)]

Buyer's Unacceptable Condition: a Planning Requirement which:

- a) will cause the Planning Permission (once implemented) to be for a limited period only; or
- b) will or is likely to increase the cost of carrying out the Development by 5% or more.
- c) to be determined in the event of dispute, and only in default of agreement between the Buyer and the Seller, in accordance with the terms of Clause 13 of this contract

CIL: the Community Infrastructure Levy introduced by sections 205-225 of the Planning Act 2008 payable in respect of the Development.

Completion Date: the date which is 10 Working Days after the Unconditional Date.

Condition: any one of the Part 1 Conditions.

Conditions Precedent: all of:-

- a) the occurrence of the Satisfaction Date or the waiver of this condition precedent by the Buyer giving notice in writing to the Seller of such waiver; and
- b) the relocation of the Seller's staff, operations and services currently delivered from the Property to an alternative location enabling the Seller to transfer the Property with vacant possession; and
- c) consideration of any representations made following publication of the proposed grant of easements pursuant to Section 123(2A) Local Government Act 1972; and

d) formal approval by the Seller's Executive and full Council meeting.

Contract Rate: interest at 4% per annum above the base rate from time to time of Lloyds Bank plc.

Court Confirmatory Decision: either:

a) a judgment of the High Court or Court of Appeal confirming the grant of Satisfactory Planning Permission by the Determining Authority or by the Secretary of State following a Planning Appeal, 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 Satisfactory Planning Permission by the Determining Authority or by the Secretary of State following a Planning Appeal

Deed of Covenant: a deed of covenant with the Seller containing covenants in the same terms as those given by the Buyer in this deed with such minor modifications as the Seller may agree.

Deposit: shall be the refundable sum of [INSERT SUM]

Determining Authority: the local planning authority.

Development: the demolition of existing structures now standing on the Property and redevelopment to provide a number of units of residential accommodation built to passivhaus standard, free from defects, in accordance with the agreed dates to enable the new buildings to be fitted out and immediately occupied for their intended purpose, including all associated services, utilities, roads, accessways, ancillary landscaping and infrastructure in accordance with the Approved Plans (or any agreed amendments thereof) subject to the requirements contained in clause 29 of this agreement.

Development Works: the works to be carried out by the Buyer, its agents, employees, contracts and subcontractors to facilitate the construction of the Development.

Electronic Payment: payment by electronic means in same day cleared funds from an account held in the name of the Buyer at a clearing bank to an account in the name of the Seller.

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) a Quashing Order has been issued and the Determining Authority has issued a further Planning Permission which is a Satisfactory Planning Permission and the Review Period in respect of that Satisfactory Planning Permission has expired.

Gross Development Value: the total gross sales value realised from the sale of the dwellings consented under the Planning Approval.

Independent Surveyor: the surveyor appointed under clause 13.

Long Stop Date: [INSERT DATE or the date calculated in accordance with Clause 16.1 to 16.3 (inclusive)]

Market Value: shall be the sum determined in accordance with clause 32.

Part 1 Conditions: the conditions in Part 1 of the Standard Commercial Property Conditions (Third Edition - 2018 Revision).

Part 2 Conditions: the conditions in Part 2 of the Standard Commercial Property Conditions (Third Edition - 2018 Revision).

Plan 1: the plan attached to this contract and marked Plan 1.

[**Plan 2:** the plan attached to this contract and marked Plan 2.]

Planning Agreement: an agreement or unilateral undertaking under section 106 of the Town and Country Planning Act 1990 required to obtain Planning Permission.

Planning Application: an application for Planning Permission in the form approved by the Seller under clause 5.

Planning Appeal: an appeal by the Buyer 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 or of the courts on the Planning Appeal.

Planning Permission: detailed planning permission for the Development granted by a Determining Authority pursuant to a Planning Application.

Planning Requirement: any of the following:

- a) a condition attached to a Planning Permission;
- b) a provision of a Planning Agreement; or

- c) a requirement to pay CIL.

President: the president for the time being of the RICS

Profit: the sum remaining once Total Costs are deducted from Gross Development Value.

Property: the freehold property at [INSERT PROPERTY DETAILS] shown more particularly delineated in [*red on the Plan*] and being part of the land registered at HM Land Registry with title absolute under title number [DN .]

Purchase Price: shall be determined to be the Market Value in accordance with clause 32 following confirmation by the Buyer of a Satisfactory Planning Permission.

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

- (a) the Determining Authority; or
- (b) the Secretary of State following a Planning Appeal.

[**Retained Land:** the land shown edged blue on Plan 2]

Review Period: either:

- (a) six weeks and ten Working Days following the date of issue of a Satisfactory Planning Permission by the Determining Authority; or
- (b) six weeks following the date of issue of a Planning Appeal Decision

RICS: Royal Institution of Chartered Surveyors.

Satisfaction Date: the later of the following dates:

- a) the date on which it is established under this contract that a Satisfactory Planning Permission has been granted; and
- b) six weeks following the issue of a Planning Permission; and
- c) the next Working Day after the expiry of the Review Period (provided that no Third Party Application is commenced by such date); and
- d) 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 any Buyer's Unacceptable Condition (unless any Buyer's Unacceptable Condition is waived by the Buyer in accordance with this contract) .

Seller's Conveyancer: [INSERT DETAILS (Ref:)].

Third Party: a person other than:

- a) the Seller;
- b) the Buyer; or
- c) anyone acting on the Seller's or Buyer'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 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 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 (a) or (b) above, given in a lower court.

Total Costs: the total costs of undertaking the Development including acquisition costs, construction costs, professional fees, marketing fees, disposal fees and finance costs.

Unconditional Date: the date upon which the all of the Conditions Precedent have been fulfilled.

VAT: value added tax chargeable in the UK.

Working Day: has the same meaning given to the term "working day" in the Part 1 Conditions.

Written Replies: are:

- a) written replies that the Seller's Conveyancer has given prior to exchange of this agreement to any written enquiries raised by the Buyer's Conveyancer; or
- b) written replies to written enquiries given prior to exchange of this agreement by the Seller's Conveyancer to the Buyer's Conveyancer.

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

1.3 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.

1.4 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.

1.5 A reference to writing or written excludes fax and email.

1.6 Unless the context otherwise requires, references to clauses are to the clauses of this contract.

1.7 Clause headings shall not affect the interpretation of this contract.

- 1.8 References to a document in **agreed form** are to that document in the form agreed by the parties.
- 1.9 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.10 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. Conditions Precedent

- 2.1 Subject to clause 2.2, this contract comes into force on the date of this contract.
- 2.2 Clause 16 to clause 23 (inclusive) are conditional on the satisfaction of the Conditions Precedent and shall come into force on the Unconditional Date.

3. Standard Commercial Property Conditions

- 3.1 The Part 1 Conditions are incorporated in this contract so far as they:
- (a) apply to a sale by private treaty;
 - (b) relate to freehold property;
 - (c) are not inconsistent with the other clauses in this contract; and
 - (d) have not been modified or excluded by any of the other clauses in this contract.
- 3.2 The terms used in this contract have the same meaning when used in the Part 1 Conditions.
- 3.3 The following Conditions are amended:
- (a) Condition 1.1.1(d) is amended so that reference to the completion date in Condition 1.1.1(d) refers instead to the Completion Date as defined in this contract.
 - (b) Condition 1.1.1(e) is amended so that reference to the contract rate in Condition 1.1.1(e) refers instead to the Contract Rate as defined in this contract.
 - (c) Condition 1.1.1(o) is amended so that reference to VAT in Condition 1.1.1(o) refers instead to VAT as defined in this contract.
 - (d) Condition 7.6.3 is amended so that reference to "Condition 4.1.2" is reference to "Clause 21".
- 3.4 Condition 1.1.4(a) does not apply to this contract.

3.5 The Part 2 Conditions are not incorporated into this contract.

4. Deposit

4.1 On the date of this contract, the Buyer will pay the Deposit to the Seller.

4.2 The Deposit must be paid by Electronic Payment.

4.3 Conditions 3.2.1 and 3.2.2 do not apply to this contract.

4.4 For the avoidance of doubt the Deposit shall be refunded to the Buyer except if completion does not take place on the Completion Date (despite the Unconditional Date having occurred) due to the default of the Buyer.

5. Planning Application

5.1 Within [INSERT TIMESCALE] after the date of this contract, the Buyer 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.

5.2 Within [20 Working Days] after the Seller has received the draft Planning Application, the Seller shall notify the Buyer in writing whether the Seller approves the draft Planning Application.

5.3 If necessary to obtain a Satisfactory Planning Permission, the Buyer may amend the Planning Application or withdraw and submit in substitution a revised Planning Application. Any such amendment, withdrawal and substitution shall be approved in writing by the Seller (such approval not to be unreasonably withheld or delayed).

5.4 The Seller shall not unreasonably withhold or delay giving approval to any draft Planning Application submitted to it by the Buyer.

5.5 Within 10 Working Days after the Seller has approved in writing the draft Planning Application, the Buyer 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.

5.6 The Buyer may not agree to any extension of the statutory period for determination of the Planning Application without the prior consent in writing of the Seller (such approval not to be unreasonably withheld or delayed).

5.7 The Seller (in its capacity as freehold owner of the Property) shall not do anything which may prejudice or obstruct the progress of any Planning Application made pursuant to this contract.

6. Planning Appeal

- 6.1 The Buyer may, but shall not be obliged to, make a Planning Appeal.
- 6.2 If the Buyer does lodge a Planning Appeal this must be within 28 days of the date of their receipt of the decision notice and the Buyer shall pursue the Planning Appeal with all due diligence.

7. Third Party Applications

- 7.1 If a Third Party Application is made, the Buyer shall within 5 Working Days after receiving it, give the Seller a copy of any judgment issued by the court in relation to the Third Party Application proceedings

8. Reporting and meetings

- 8.1 8.1 The Buyer will keep the Seller regularly informed as to progress of the Planning Application and Planning Agreement Planning Appeal or any Third Party Application and will (if so requested by the Seller) supply the Seller with copies of all correspondence to or from the Buyer or to or from the Buyer's Conveyancer in connection with the Planning Application or Planning Agreement Planning Appeal or any Third Party Application (including accompanying plans and other documents, but excluding correspondence exclusively between the Buyer and the Buyer's Conveyancer or other legal representative) within 5 Working Days after either:
 - (i) the date of any correspondence sent by the Buyer or the Buyer's Conveyancer; or
 - (ii) the date of receipt of any correspondence by the Buyer or the Buyer's Conveyancer.

9. Notification of planning decisions and appeals

- 9.1 The Buyer shall notify the Seller within 5 Working Days of the receipt of any planning decision resulting from the Planning Application (whether original, amended or resubmitted) or the making of a planning appeal.

10. Approval of Planning Permission and CIL

- 10.1 At the same time as the Buyer notifies the Seller of the grant of a Planning Permission under clause 9, the Buyer shall notify the Seller in writing whether or not a condition imposed on the Planning Permission is a Buyer's Unacceptable Condition. The Buyer shall give reasons if it considers that such a condition or requirement is a Buyer's Unacceptable Condition.

11. Planning Agreement

- 11.1 If a Planning Agreement is required, the Buyer shall use reasonable endeavours to negotiate and agree the terms of the Planning Agreement free from any Buyer's Unacceptable Conditions as quickly as reasonably possible.
- 11.2 Within 5 Working Days of the final form of the Planning Agreement being agreed, the Buyer shall send a copy of it to the Seller.
- 11.3 At the same time as the Buyer sends the final form of the Planning Agreement to the Seller in accordance with clause 11.2, the Buyer shall notify the Seller in writing whether or not any provision of the final form of any Planning Agreement (if completed in that form) would be a Buyer's Unacceptable Condition. The Buyer shall give reasons if it considers that the final form of any Planning Agreement (if completed in that form) would be subject to any Buyer's Unacceptable Condition.
- 11.4 The Buyer shall keep the Seller indemnified against all liabilities, proceedings, costs, claims, demands and expenses incurred or arising as a result of a Planning Agreement.
- 11.5 If requested by the Buyer and at the Buyer's cost, the Seller shall enter into any Planning Agreement provided that any liabilities of the Seller in the Planning Agreement:
- (a) are expressed to be dependent on the implementation of the Planning Permission; and
 - (b) shall cease on disposal of the Seller's interest in the Property.

12. Right to waive Buyer's Unacceptable Conditions

- 12.1 The Buyer may waive its right to treat any Planning Requirement as a Buyer's Unacceptable Condition by giving written notice to the Seller at any time before the Long Stop Date

13. Disputes

- 13.1 Any dispute arising between the Seller and the Buyer about whether or not a Planning Requirement is a Buyer's Unacceptable Condition, or in relation to any shall be referred for determination by an Independent Surveyor. A reference may be made at any time by either the Seller or the Buyer.
- 13.2 An Independent Surveyor shall be appointed by agreement between the Seller and the Buyer or, if the Seller and Buyer are unable to agree an appointment, either of them may request the appointment to be made by the President.

- 13.3 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.
- 13.4 If an Independent Surveyor appointed dies or becomes unwilling or incapable of acting, then:
- (a) either the Seller or the Buyer 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 the first appointed Independent Surveyor.
- 13.5 The Independent Surveyor shall act as an expert and shall be required to:
- (a) decide whether or not a Planning Requirement is a Buyer's Unacceptable Condition; and
 - (b) prepare a written note of the decision and give a copy of the decision to both the Seller and the Buyer within 30 Working Days of the date of the Independent Surveyor's appointment.
- 13.6 The Seller and the Buyer 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.
- 13.7 The Independent Surveyor's written decision shall be final and binding in the absence of manifest error or fraud.
- 13.8 The costs of the Independent Surveyor shall be borne equally by the Seller and the Buyer or in such different proportion as the Independent Surveyor shall direct.

14. Long Stop Date

- 14.1 The Long Stop Date shall be [INSERT] unless on that date:
- (a) a Planning Application has been submitted to the Determining Authority but has not been determined; or
 - (b) a Planning Permission has been granted but it is not yet established under this contract whether or not the Planning Permission is a Satisfactory Planning Permission;
- in which case the Long Stop Date shall be extended as set out in clause 14.2.
- 14.2 If the circumstances set out in clause 14.1 (a) or clause 14.1(b) apply, the Long Stop Date shall be extended to:

- (a) (where clause 14.1 (a)(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); and
 - (ii) if a Planning Permission is granted pursuant to the Planning Application, the date on which it is established under this contract whether or not the Planning Permission is a Satisfactory Planning Permission.
- (b) (where clause 14.1 (b) applies) the date which is 10 Working Days after the date on which it is established under this contract whether or not the Planning Permission is a Satisfactory Planning Permission.

15. Termination

- 15.1 If the Unconditional Date has not occurred by the Long Stop Date either the Seller or the Buyer may at any time after the Long Stop Date (but only before the Unconditional Date) give written notice to the other to determine this contract.

16. Risk and insurance

- 16.1 The Seller is under no obligation to the Buyer to insure the Property.
- 16.2 No damage to or destruction of the Property nor any deterioration in its condition, however caused, will entitle the Buyer either to any reduction of the Purchase Price or to refuse to complete or to delay completion.
- 16.3 Conditions 8.2.2, 8.2.3 and 8.2.4(b) do not apply to this contract.

17. Sale and purchase

- 17.1 The Seller will sell and the Buyer will buy the Property for the Purchase Price on the terms of this contract.
- 17.2 The Buyer cannot require the Seller to:
 - (a) transfer the Property or any part of it to any person other than the Buyer; or
 - (b) transfer the Property in more than one parcel or by more than one transfer; or
 - (c) apportion the Purchase Price between different parts of the Property.

18. Deducing title

- 18.1 The Seller's title to the Property has been deduced to the Buyer's Conveyancer before the date of this contract.

18.2 The Buyer is deemed to have full knowledge of the title and is not entitled to raise any objection, enquiry or requisition in relation to it.

18.3 Conditions 7.1, 7.2, 7.3.1 and 7.4.2 do not apply to this contract.

19. Vacant possession

19.1 The Property will be sold with vacant possession on completion.

19.2 [The following fixtures and fittings on the Property are excluded from the sale and the Seller may at any time before completion remove them from the Property and the Buyer will raise no objections: [SPECIFY ITEMS].]

20. Title guarantee

20.1 The Seller will transfer the Property with full title guarantee.

20.2 Condition 7.6.2 does not apply to this contract.

21. Matters affecting the Property

21.1 The Seller will sell the Property free from incumbrances other than:

- (a) any matters contained or referred to in the entries or records made in registers maintained by HM Land Registry as at [INSERT DATE AND TIME under title number DN INSERT] ;
- (b) any matters discoverable by inspection of the Property before the Unconditional Date;
- (c) any matters which the Seller does not and could not reasonably know about;
- (d) any matters disclosed by searches or enquiries made before the Unconditional Date or which would have been disclosed by the searches and enquiries that a prudent buyer would have made before the Unconditional Date;
- (e) public requirements;
- (f) any matters which are unregistered interests which override registered dispositions under Schedule 3 to the Land Registration Act 2002 ;
- (g) [INSERT SPECIFIC MATTERS]
- (h) any agreements entered into pursuant to clause 11 of this contract; and
- (i) the Satisfactory Planning Permission.

21.2 Conditions 4.1.1, 4.1.2 and 4.1.3 do not apply to this contract.

21.3 The Buyer is deemed to have full knowledge of the matters referred to in clause 21.1 and will not raise any enquiry, objection, requisition or claim in respect of any of them.

22. Transfer

- 22.1 The transfer to the Buyer will be substantially in the agreed form annexed to this contract.
- 22.2 The Buyer and the Seller will execute the transfer in duplicate.
- 22.3 Condition 7.6.5(b) does not apply to this contract.

23. Completion

- 23.1 Completion will take place on the Completion Date.
- 23.2 Condition 9.4 is amended to add, "(d) any other sum which the parties agree under the terms of the contract should be paid or allowed on completion".
- 23.3 Condition 9.7 is amended to read: "The buyer is to pay the money due on completion by Electronic Payment and, if appropriate, by an unconditional release of a deposit held by a stakeholder".

24. VAT

- 24.1 Each amount stated to be payable by the Buyer to the Seller under or pursuant to this contract is exclusive of VAT (if any).
- 24.2 If any VAT is chargeable on any supply made by the Seller under or pursuant to this contract, the Buyer will on receipt of a valid VAT invoice, pay the Seller an amount equal to that VAT as additional consideration on completion.
- 24.3 Conditions 2.1 and 2.2 do not apply to this contract.

25. Buyer's acknowledgement of condition

- 25.1 The Buyer acknowledges that before the date of this contract, the Seller has given the Buyer and others authorised by the Buyer, permission and the opportunity to inspect, survey and carry out investigations as to the condition of the Property. The Buyer has formed its own view as to the condition of the Property and the suitability of the Property for the Buyer's purposes and accepts that the Seller gives no representation or warranty in this respect.

26. Non-assignment

- 26.1 This contract is personal to the Buyer and the Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this contract or any part of it.

27. Termination on Buyer's insolvency or breach

27.1 Without affecting any other right or remedy available to it, the Seller may terminate this contract with immediate effect by giving notice to the Buyer if any of the following events occur:

- (a) the Buyer is in fundamental breach of any of its obligations in this contract;
- (b) the Buyer is in substantial breach of any of its obligations in this contract and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Seller;
- (c) the Buyer 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;
- (d) the Buyer 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 Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (e) 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 Buyer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (f) 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 Buyer (being a company);
- (g) the holder of a qualifying floating charge over the assets of the Buyer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer;
- (i) a creditor or encumbrancer of the Buyer 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 Buyer assets and such attachment or process is not discharged within 15 Working Days;
- (j) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in [clause 27 (c) to clause 27 (i)] (inclusive);
- (k) the Buyer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

- (l) the Buyer (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;
- (m) the Buyer (being a company) is struck off from the Register of Companies; or
- (n) the Buyer otherwise ceases to exist.

28. Consequences of termination

28.1 If this contract is terminated under clause 15 or clause 27 then:

- (a) the Buyer agrees that the Seller may proceed with the Planning Application as the Seller considers fit; and
- (b) the Buyer will within 10 Working Days after the date of termination of this contract:
 - (i) complete and sign any documentation as may be required by the Determining Authority to enable the Seller to proceed with the Planning Application, any Planning Appeal and any Third Party Application
 - (ii) assign or procure the assignment to the Seller of the full copyright in, and take any other steps required to ensure that the Seller has the rights to use, any plans or drawings prepared for the Development without payment to any person.
 - (iii) deliver to the Seller all documentation under the Buyer's control relating to the Planning Application and any Planning Agreement, any Planning Appeal and any Third Party Application.

28.2 If either party gives notice to terminate this contract under clause 15 or the Seller gives notice to terminate this contract under clause 28:

- (a) this contract shall be terminated with immediate effect from the date of the notice to terminate and neither party shall have any further rights or obligations under this contract save for:
 - (i) the rights of either party in respect of any earlier breach of this contract; and
 - (ii) the obligations in the clauses referred to in clause 28.2 (b), 29, 30 and 31;
- (b) clause 28, 29, 30, 31 and clause 11.4 shall continue in force notwithstanding the termination of this contract under clause 28.2 (a); and
- (c) within 10 Working Days after the termination, the Buyer shall remove all entries relating to this contract registered against the Seller's title to the Property.

29. Buyer's Development and Post Development Obligations

29.1 The Buyer must, at all times both during the carrying out of the Development Works and following completion of the Development:

a) [INSERT ADDITIONAL AGREED TERMS]

29.2 This clause 29 will not merge on completion of the contract.

30. Restrictions on Use

30.1 The Property may only be developed in accordance with the Approved Plans and (for the avoidance of doubt) any alterations or amendments to the Approved Plans must first be approved by the Seller (not to be unreasonably withheld or delayed) in addition to any approval which may be required by the local planning authority.

30.2 The Property may not be developed or used for purpose built student accommodation.

30.3 The Buyer must comply with the local planning authority's policy on provision of affordable housing.

30.4 The Buyer's contractors, sub-contractors and any future residents or occupiers of the Development shall not be permitted to park vehicles on the Retained Land or the Access Road at any time.

30.5 This clause 30 will not merge on completion of this contract.

31. Determination of the Market Value

31.1 The Market Value shall be determined by an independent RICS registered valuer jointly appointed by the Seller and the Buyer or (if the Seller and the Buyer are unable to agree on the appointment) by the President for the time being of the Royal Institution of Chartered Surveyors upon the application of them ('the Valuer').

31.2 On the basis of a residual valuation the Valuer shall determine the Market Value being the reasonable estimated amount for which the Property with the benefit of the Satisfactory Planning Permission for the Development in accordance with the Approved Plans should exchange on the date on which the Buyer confirms a Satisfactory Planning Permission has been obtained between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where each party acted knowledgeably, prudently and without compulsion taking into account the costs which a developer would reasonably expend to secure Satisfactory Planning Permission for the Property.

32. Entire agreement

32.1 This contract and the documents annexed to it constitute the whole agreement between the parties and supersede all previous discussions, correspondence,

negotiations, arrangements, understandings and agreements between them relating to their subject matter.

- 32.2 The Buyer acknowledges that in entering into this contract and any documents annexed to it the Buyer does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) other than those:
- (a) set out in this contract or the documents annexed to it; or
 - (b) contained in any Written Replies.
- 32.3 This clause 32 will not merge on completion of the contract.
- 32.4 Nothing in this clause shall limit or exclude any liability for fraud.
- 32.5 Condition 10.1 is varied so that the words "the negotiations leading to it" are replaced with the words "Written Replies".

33. Notices

- 33.1 Any notice given under this contract must be in writing and signed by or on behalf of the party giving it.
- 33.2 Any notice or document to be given under this contract must be given by delivering it personally or by sending it by pre-paid first class or recorded delivery post to the party at the address shown in this contract or such other address as the party may notify in writing from time to time
- 33.3 Giving a notice or a document to a party's conveyancer has the same effect as giving it to that party.
- 33.4 A notice or document given under this contract will not have been validly given or delivered if sent by e-mail.
- 33.5 Any notice or document given in accordance with this clause will be deemed to have been received:
- (a) if delivered personally, at the time of delivery 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;
 - (b) if sent by pre-paid first class or recorded delivery post, at 9.00 am on the second Working Day after posting.
- 33.6 In proving delivery, it will be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class or recorded delivery post.

33.7 Condition 1.3 does not apply to this contract.

34. Rights of third parties

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

34.2 Condition 1.5 does not apply to this contract.

35. Seller's rights as a local authority

35.1 For the avoidance of doubt the Seller is entering into this contract as freehold owner of the Property and it is hereby agreed by the parties that nothing contained in or implied by this contract shall prejudice or affect the Seller's rights, powers, duties and obligations in the exercise of any of its functions as a local authority (including, without limitation, as a local planning authority) and the rights, powers, duties and obligations of the Seller under all public and private statutes, byelaws, orders and regulations may be as fully and effectually exercised in relation to the Property as if the Seller was not the owner of the Property and this contract had not been entered into by it.

36. Governing law

This contract 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.

37. 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 contract or its subject matter or formation (including non-contractual disputes or claims).

This contract has been entered into on the date stated at the beginning of it.

SIGNED
for and on behalf of the Seller

SIGNED

for and on behalf of the Buyer

Appendix D

Key Inputs and Assumptions

CONFIDENTIAL

KEY INPUTS AND ASSUMPTIONS

ECONOMIC ASSUMPTIONS

RPI	2%
CPI	2% from 2021
Market sales inflation	0% per annum
Build cost inflation	As per Cost plan
Management and maintenance cost inflation	RPI

DEVELOPMENT ASSUMPTIONS

Loan type (e.g. bullet repayment, amortising)	Repayment
Debt Term	■ years
Interest rate	■%
Grant	0%
Surplus target	1-20% on costs
Contingency	5% (to be assumed within cost plans)

Appendix E

Financial Statements

CONFIDENTIAL

Please note: All of the financial statements have been removed as they are being withheld (pages 106 – 182).