

DATED

20[]

(1) BRB (RESIDUARY) LIMITED

and

(2) [

]

AGREEMENT

for the sale and purchase of
freehold property known as

**Land on the east
side of Mill Road
Hertford**

shoosmiths

1st Floor
Witan Gate House
500-600 Witan Gate West
Milton Keynes
MK9 1SH
Tel: 03700 868300
Fax: 03700 868301
Ref. LBW 195154.28

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THIS AGREEMENT made the _____ day of _____ 20[]

BETWEEN:

1. **BRB (RESIDUARY) LIMITED**, a company incorporated in England and Wales (company number 4146505) whose registered office is at One Kemble Street London WC2B 4AN (the “**Seller**”);
2. **[NAME]**, [of][a company incorporated in England and Wales (company number []) whose registered office is at] [] (the “**Buyer**”).

WHEREBY IT IS AGREED as follows:

1 DEFINITIONS

In this Agreement, unless the context otherwise requires, the following definitions apply:

| | |
|-----------------------------------|---|
| “ Actual Completion Date ” | the date on which completion of the sale and purchase of the Property actually takes place; |
| “ Buyer’s Solicitors ” | [] of [] [Ref:]; |
| “ Completion Date ” | ten Working Days from satisfaction of the Planning Condition; |
| “ Contract Rate ” | four per cent (4%) above the base rate from time to time of The Royal Bank of Scotland PLC (or such other clearing bank as the Seller shall notify to the Buyer in writing) calculated on a daily basis; |
| “ Dangerous Substances ” | any natural or artificial substances (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) or organisms: (a) capable of causing harm or which may be harmful to man or any other living organism supported by the environment; or (b) capable of damaging the environment (whether natural or man-made) or public health; or (c) capable of being, or usually regarded as, a pest or other invasive organism; |
| “ Deed of Covenant ” | means a deed of covenant in the form of the agreed draft annexed to this Agreement pursuant to which the Buyer covenants with Network Rail Infrastructure Limited in respect of obligations in the Demarcation Agreement; |
| “ Demarcation Agreement ” | the demarcation agreement dated 5 June 1996 made between (1) British Railways Board and (2) Railtrack plc; |
| “ Deposit ” | the sum of [] pounds (£[]); |
| “ Environmental ” | any release, leakage, discharge, deposit, emission, spillage or |

| | |
|------------------------------|---|
| “Seller’s Solicitors” | Shoosmiths of 1 st Floor Witan Gate House 500-600 Witan Gate West Milton Keynes MK9 1SH Ref: LBW 195154.28; |
| “Standard Conditions” | the Standard Commercial Property Conditions (Second Edition); |
| “VAT” | value added tax as provided for in the Value Added Tax Act 1994 or any similar tax replacing or introduced in addition to it; |
| “Working Day” | any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday in England and excluding the period 23 December to 2 January (inclusive) in any year. |

2 INTERPRETATION

- 2.1 Unless this Agreement states otherwise:
- 2.1.1 references to clauses, Schedules and Appendices are to the clauses, schedules and appendices of this Agreement;
 - 2.1.2 reference to a paragraph is to the paragraph of the Schedule in which the reference is made;
 - 2.1.3 reference to any legislation (whether specifically named or to legislation in general) shall include any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations or other subordinate legislation for the time being made, issued or given under that legislation or deriving validity from it, and also reference to legislation in general is to all local, national and directly applicable supra-national laws for the time being in force.
- 2.2 Words importing one gender include any other genders and words importing the singular import the plural and vice versa.
- 2.3 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.4 The clause headings in this Agreement are for reference only and shall not affect its construction or interpretation.
- 2.5 Where the Buyer or the Seller comprises more than one person, the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons.
- 2.6 Unless the context requires otherwise, the words “include” and “including” shall be deemed to be followed by the words “without limitation”.

3 SALE AND PURCHASE

The Seller will sell and the Buyer will buy the Property at the Price upon and in accordance with the terms of this Agreement.

4 CONDITIONS

4.1 Completion of the sale and purchase of the Property is conditional upon the satisfaction of the Planning Condition.

4.2 The Seller and the Buyer agree to observe and perform their respective obligations and the conditions set out in the Second Schedule.

5 DEPOSIT

5.1 The Buyer shall pay the Deposit to the Seller's Solicitors on the date of this Agreement.

5.2 The Seller's Solicitors are to hold the Deposit as stakeholder on terms that on completion it is paid to the Seller with accrued interest.

5.3 The Deposit may be paid by any of the following methods:

5.3.1 cheque drawn on a solicitors client account; or

5.3.2 telegraphic transfer of cleared funds.

6 COMPLETION

6.1 Subject to the provisions of clause 4 completion shall take place on the Completion Date.

6.2 On the Completion Date the Buyer shall pay to the Seller:

6.2.1 the balance of the Price; and

6.2.2 any other sums required under the terms of this Agreement.

6.3 The monies payable by the Buyer on completion shall be paid from one source only and from a clearing bank by telegraphic transfer to a bank account in the United Kingdom nominated by the Seller's Solicitors or in the absence of any nomination to the Seller's Solicitors client account (number 21738436) maintained at The Royal Bank of Scotland PO Box 412 62/63 Threadneedle Street London EC2R 8LA (sort code 15-10-00).

6.4 The monies due from the Buyer on completion shall not be deemed to have been paid to or received by the Seller until the Seller's Solicitors receive confirmation that the money has been credited to the relevant account and the Seller shall not be required to complete the sale and purchase until such confirmation has been received.

6.5 Any deeds or documents sent by post or through a document exchange shall be sent at the Buyer's risk.

7 TITLE

The Seller has deduced title to the Property to the Buyer prior to the date of this Agreement. The Buyer purchases the Property with full knowledge of the title and shall not raise any enquiry, requisition or objection to it except in respect of any entry made or recorded after the date of this Agreement against the Property at the Land Registry that relates to matters that have not already been disclosed by the Seller to the Buyer.

8 MATTERS AFFECTING THE PROPERTY

- 8.1 The Property is sold subject to and where appropriate with the benefit of the matters contained or referred to in the registers of title to the Property (other than mortgages or financial charges).
- 8.2 The Property is sold subject to:
- 8.2.1 all local land charges registered before, on or after the date of this Agreement and all matters capable of registration as local land charges;
 - 8.2.2 all notices served and orders, demands, proposals and requirements made by any competent authority before, on or after the date of this Agreement;
 - 8.2.3 all proposals, orders, directions, notices, charges, restrictions, conditions, agreements and other matters arising under the Planning Acts which affect or relate to the Property before on or after the date of this Agreement;
 - 8.2.4 anything which would or should be revealed by the searches and enquiries which a prudent Buyer would undertake before entering into this Agreement;
 - 8.2.5 any unregistered interests which fall within any of the paragraphs of Schedule 3 of the Land Registration Act 2002;
 - 8.2.6 such unregistered interests as may affect the Property to the extent and for so long as they are preserved by the transitional provisions of Schedule 12 of the Land Registration Act 2002; and
 - 8.2.7 all easements, quasi-easements, public or private rights, wayleaves, privileges, outgoing, incumbrances, exceptions, liabilities and other matters affecting the Property.
- 8.3 The Buyer is deemed to purchase the Property with full knowledge and notice of the matters referred to in clause 8.2 and the Seller shall be under no duty to define them further. The Buyer shall not raise any objection, enquiry or requisition in relation to any of them.

9 TITLE GUARANTEE

- 9.1 The Seller sells the Property with full title guarantee varied as provided in clause 9.2.
- 9.2 The covenants implied by the Law of Property (Miscellaneous Provisions) Act 1994 shall be varied as follows:
- 9.2.1 the words "at his own cost" shall be deleted from the covenant set out in section 2(1)(b) and the words "at the cost of the person to whom he disposes of the property" substituted for them;
 - 9.2.2 the words "and could not reasonably be expected to" shall be deleted from the covenant set out in section 3(1); and
 - 9.2.3 the covenants set out in section 2(1)(a) and section 3 shall be construed so that matters recorded in registers open to public inspection are considered to be within the actual knowledge of the person to whom the disposition is made.

10 THE TRANSFER

- 10.1 The transfer shall contain:

- 10.1.1 a covenant by the Buyer with the Seller that the Buyer and its successors in title shall perform and observe all the covenants, agreements and other matters contained or referred to in the Registers to Title Number HD490269 (save for relating to mortgages or financial charges) so far as they relate to the Property and are still subsisting and capable of taking effect and to indemnify and keep the Seller indemnified from and against all actions, claims, losses, costs, expenses and liability in any way relating to any of them;
- 10.1.2 an agreement that the Property is transferred subject to the matters contained or referred to in this Agreement; and
- 10.1.3 the variations to the title guarantee specified in clause 9.2.
- 10.2 On completion the Buyer shall execute and deliver to the Seller the Deed of Covenant. In the event that the Railtrack Land (as defined in the Demarcation Agreement) or any part of it has been disposed of the name of the covenantee in the Deed of Covenant shall be amended accordingly.
- 10.3 If asked to do so by the Seller the Buyer shall prepare and execute counterparts or duplicates of the transfer and any other deed required under the terms of this Agreement.

11 VACANT POSSESSION

The Property is sold with vacant possession.

12 ENVIRONMENT

12.1 The Buyer acknowledges that:

12.1.1 the Property may have been affected by Dangerous Substances as a consequence of current and/or former uses of the Property;

12.1.2 the Buyer has been afforded the opportunity of carrying out any survey or investigations that it would wish to conduct and is aware that the Seller gives no warranty as to the state and condition of the Property or its suitability for any current and/or future use and the Buyer must rely absolutely on the Buyer's own opinion and professional advice concerning the quality, state and condition of the Property and of any Environmental Contamination affecting or potentially affecting the Property;

12.1.3 the Seller has provided all available information to enable the Buyer to assess the presence, nature and broad measure of all and any matters which may have the result that the Property be determined as contaminated land within the meaning of Part IIA of the Environmental Protection Act 1990;

12.1.4 the Buyer, having been given the information described in clause 12.1.3 and had full opportunity to inspect and survey the Property and carry out investigations on it, accepts and acknowledges that it has obtained, received and understood such information and the Seller is therefore entitled to be excluded from the categories of person liable to contribute to the cost of any Remediation Action at, on or under the Property and that the Buyer will bear any such liability for such cost as would otherwise have attached to the Seller.

12.2 The Buyer agrees:

- 12.2.1 that any obligation to carry out, or bear the costs of, any works to be undertaken on the soil and in any ground water under or around the Property or to any adjoining land to which any Environmental Contamination may have spread from the Property (other than property retained by the Seller if any) is transferred to the Buyer to the complete exoneration of the Seller and the Buyer agrees to indemnify the Seller against any costs, expenses or liabilities involved in undertaking such works;
 - 12.2.2 not to submit any claims relating to the state and condition of the Property (including ground water) against the Seller and/or its officers, directors, employees and agents; and
 - 12.2.3 that no insurance cover is provided to the Buyer under any of the Seller's insurance policies and that any such policies shall be deemed terminated, commuted and cancelled ab initio and no claim shall derive from them in respect of any event whether occurring before or after the date of this Agreement.
- 12.3 The Buyer shall indemnify and keep the Seller indemnified against all actions, claims, losses, costs, expenses, liabilities and sanctions in any way relating to any one or more of the following:
- 12.3.1 claims by third parties in respect of Environmental Contamination as a result of the use or occupation of the Property;
 - 12.3.2 cleaning, removing or making safe and harmless any Dangerous Substances where such activity is required by any competent authority or court of competent jurisdiction;
 - 12.3.3 the maintenance cost of keeping any Dangerous Substances which have been made safe or secured pursuant to obligations imposed on the Seller under any Environmental Law or under any condition in any environmental licence, permit, consent, authorisation or any like document held by the Seller at the date of this Agreement;
 - 12.3.4 obligations imposed on the Seller directly or indirectly by any Environmental Law whether before or after the date of this Agreement;
 - 12.3.5 any Environmental Contamination caused by or arising from the carrying out of any operations, development or other works on the Property by the Buyer or its successors in title;
 - 12.3.6 any contamination of the Property whenever it shall be discovered or may have been caused; and
 - 12.3.7 any Environmental Liabilities relating to or arising in respect of the Property or its use or occupation.

13 RESTRICTIONS ON SUBSALE AND ASSIGNMENT

- 13.1 This Agreement is personal to the Buyer and shall not be capable of assignment by it.
- 13.2 The Seller shall not be obliged to transfer the Property in any way other than by a single transfer of the whole in favour of the Buyer at the Price.

14 REGISTRATION

14.1 The Buyer shall submit a valid application to the Land Registry for registration of the transfer as soon as practicable after the Actual Completion Date.

14.2 The Buyer shall ensure that any requisitions raised by the Land Registry in connection with its application under clause 14.1 are dealt with properly and within the time limit prescribed by the Land Registry and on completion of that registration shall provide the Seller with an official copy of the registers of title and title plan.

15 AGREEMENTS AND ACKNOWLEDGEMENTS

The Buyer acknowledges that:

15.1 it has not entered into this Agreement in reliance upon any representation made by or on behalf of the Seller other than any representation given by the Seller's Solicitors on behalf of the Seller in written replies to any written enquiries made by the Buyer's Solicitors before the date of this Agreement;

15.2 it has been given the opportunity to inspect the Property and to satisfy itself as to its physical condition above and below ground, extent and fitness for purpose;

15.3 the Buyer has satisfied itself on matters relating to the use of the Property in relation to the Planning Acts; and

15.4 accepts the Property as it is.

16 VAT

16.1 All monies payable under this Agreement are exclusive of VAT and any obligation to pay money includes an obligation to pay any VAT chargeable in respect of that payment.

16.2 When a taxable supply for VAT purposes is made under this Agreement, a valid VAT invoice shall be issued in respect of that supply.

16.3 Any VAT payable under this Agreement shall be paid at the same time as the taxable payment to which it relates.

17 NOTICES

The Buyer irrevocably authorises the Buyer's Solicitors to accept service of all proceedings on behalf of the Buyer arising from the terms of this Agreement.

18 ENTIRE AGREEMENT

This Agreement constitutes the entire contract between the Buyer and the Seller. It may only be varied by the parties or their solicitors (with their authority) in writing by specific reference to this clause, stating that this Agreement is varied in the manner specified.

19 STANDARD COMMERCIAL CONDITIONS

19.1 The Standard Conditions are incorporated into this Agreement, varied as provided in clause 19.4.

19.2 The definitions contained in the Standard Conditions shall apply to this Agreement unless the context otherwise requires or they have been given a different definition by the other provisions of this Agreement.

- 19.3 Where there is inconsistency between the Standard Conditions and the other provisions of this Agreement, the other provisions of this Agreement shall prevail.
- 19.4 The Standard Conditions shall be varied as follows:
- 19.4.1 condition 1.1.4 (a) shall not apply to this Agreement and the conditions in Part 2 of the Standard Conditions are not incorporated into this Agreement;
 - 19.4.2 conditions 1.1.1(d) and 1.1.1(e) shall not apply and in Condition 1.1.1(o) the words "and such working day shall expire at 5.30pm" shall be added;
 - 19.4.3 condition 1.3.3 shall start with the words "Any notice required or authorised by this contract must be given by delivering it personally or sending it by prepaid post or document exchange";
 - 19.4.4 condition 1.3.3(b) and 1.3.5(c) shall not apply and Condition 1.3.5(a) shall be deleted and the following substituted: "A notice or document sent through a document exchange is received at the time when the addressee collects it from the document exchange, or if earlier, 8.00am on the first Working Day on which it is available for collection.";
 - 19.4.5 in conditions 1.3.7(a) and 1.3.7(b) the words "unless returned undelivered" shall be added after the word "posting" and conditions 1.3.7(d) and 1.3.7(e) shall not apply;
 - 19.4.6 condition 1.4 shall not apply;
 - 19.4.7 condition 2.2 shall not apply;
 - 19.4.8 in condition 3.1.2(c) the words "and could not reasonably" shall be deleted and condition 3.1.3 shall not apply;
 - 19.4.9 condition 3.3(b) shall not apply;
 - 19.4.10 condition 6.1 shall not apply and in condition 6.2.1(a) the words "taking the steps described in condition 6.1.1" shall be deleted. Conditions 6.2.2, 6.2.3 and 6.3.1 shall not apply;
 - 19.4.11 in condition 6.4.2 the words "pay for" shall be deleted and substituted with the words "at the buyer's expense";
 - 19.4.12 condition 6.6.2 shall not apply;
 - 19.4.13 in condition 6.6.5, after the word "completion", the words "and which is not a matter of public record" shall be added;
 - 19.4.14 conditions 7.1.1, 7.1.2 and 7.1.4 (b) shall not apply;
 - 19.4.15 in condition 8.1.1 the words "completion date is twenty working days after the date of this contract but" shall be deleted;
 - 19.4.16 in condition 8.3.2 the words "or the seller exercises its option in condition 9.3.4" shall be deleted and the following substituted "or the buyer holds the property as tenant of the seller or the seller is compensated under condition 9.3";

19.4.17 in condition 8.4(a) the words “condition 8.3” shall be deleted and the following substituted “the contract”;

19.4.18 in Condition 9.1.1 the words “in the negotiations leading to it” shall be deleted and the following substituted “any written representation given by the seller’s solicitors on behalf of the seller in reply to any written enquiries made by the buyer’s solicitors before the date of the contract” and in Condition 9.1.2 the words “or value” shall be deleted;

19.4.19 Condition 9.3.2 shall be deleted and the following substituted:

“9.3.2 Compensation is calculated at the contract rate on the purchase price (together with any separate price to be paid for chattels and any VAT applicable) between the completion date and actual completion”;

19.4.20 add new condition 9.7 “if any petition for the winding up of the buyer is issued at court or any bankruptcy petition is issued in respect of the buyer; any resolution is passed by the buyer requiring it to be wound up voluntarily (except with regard to a solvent liquidation); any administrator is appointed in respect of the buyer or any application for an administration order is made; any person is appointed as administrative receiver in respect of the buyer or the buyer enters into a voluntary arrangement or compromise or scheme of arrangement with the creditors, the seller may serve notice withdrawing from the contract and condition 9.5.2 then applies”.

20 TERMINATION

20.1 An Event of Default is any of the following:

20.1.1 the Buyer is the subject of an order made or a resolution passed or analogous proceedings taken for appointing an administrator of or for its winding up (other than for the purpose of reconstruction or amalgamation not involving a realisation of assets);

20.1.2 an encumbrancer takes possession or exercises any power of sale or a receiver or administrative receiver is appointed over the whole or any part of the undertaking property assets or revenues of the Buyer as applicable;

20.1.3 the Buyer being unable to pay its debts within the meaning of Section 123(1) of the Insolvency Act 1986 or being unable to pay its debts as they fall due;

20.1.4 the Buyer is struck off from the register of Companies;

20.1.5 the Buyer otherwise ceases to exist;

20.1.6 the Buyer is in breach of its obligations contained in this Agreement and has failed to remedy such breach within 10 Working Days of receipt of written notice of such breach.

20.2 If an Event of Default occurs in relation to the Buyer the Seller may determine this Agreement by written notice to the Buyer and the Deposit together with all accrued interest shall be automatically released to the Seller.

20.3 If notice to determine is served under clause 20.2 this Agreement will be terminated with immediate effect from the date of the notice and neither party will have any further rights or obligations under this Agreement except:

20.3.1 that the termination of this Agreement will not affect either party's rights in connection with any antecedent breach of this Agreement; and

20.3.2 as referred to in clause 21.

21 TERMINATION AND JOINT PLANNING APPLICATIONS

If the Planning Application is submitted under paragraph 4 of the Second Schedule by the Buyer and this Agreement is subsequently terminated under either paragraph 8 of the Second Schedule or clause 20 then:

21.1 the Buyer agrees that the Seller may proceed with the Planning Application or any Planning Appeal as the Seller considers fit; and

21.2 the Buyer shall within 10 Working Days after the date of termination of this Agreement:

21.2.1 complete and sign any documentation as may be required by the local authority or the Secretary of State to enable the Seller to proceed with the Planning Application, or any Planning Appeal;

21.2.2 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;

21.2.3 remove any entries relating to this Agreement registered against the Seller's title to the Property;

21.2.4 deliver to the Seller all documentation under the Buyer's control relating to the Planning Application, any Planning Agreement and/or any Planning Appeal.

21.3 If this Agreement is terminated by either party pursuant to either paragraph 8 of the Second Schedule or clause 20 the Buyer shall provide (upon reasonable request from the Seller) a list of plans, drawings, surveys, reports and the like carried out or commissioned by the Buyer in connection with the proposed development of the Property (the "**Reports**") and the Buyer will at its own cost use all reasonable endeavours to procure the assignment of such Reports as the Seller may request to either the Seller or such person as the Seller may direct (in its absolute discretion).

22 DETERMINATION OF DISPUTES

22.1 If any dispute or difference shall arise between the Seller and the Buyer as to any matter arising out of or in connection with this Agreement then either party may (unless this Agreement expressly provides otherwise) refer the dispute or difference for determination by an independent person (the "**Independent Person**") who shall have been qualified in respect of the general subject matter of the dispute or difference for not less than 10 years and who shall be a specialist in relation to such subject matter.

22.2 The Independent Person shall (in the case of agreement about his appointment) be appointed by the Seller and the Buyer (or in the absence of agreement at any time about his appointment or if he refuses or is incapable of acting) be nominated having regard to the nature of the dispute or difference in question by either:

- 22.2.1 the President for the time being of the Royal Institute of British Architects;
 - 22.2.2 the President for the time being of the Royal Institution of Chartered Surveyors;
 - 22.2.3 the President for the time being of the Law Society;
 - 22.2.4 the President for the time being of the Institution of Chartered Accountants;
 - 22.2.5 the President for the time being of the Institution of Civil Engineers,
- or (in each such case) the duly appointed deputy of such President or any other person authorised by him to make appointments on his behalf.
- 22.3 Any person appointed under this clause 22 shall act as an expert and not as an arbitrator and his decision shall be final and binding upon the parties hereto.
 - 22.4 The Independent Person shall consider (inter alia) any representations and cross-representations and supporting evidence made on behalf of either the Seller or the Buyer (if made reasonably promptly) but shall not be bound thereby.
 - 22.5 Where the Independent Person dies refuses to act or is unable to act or fails to proceed with reasonable speed to discharge his duties the procedure contained in this clause 17 for the appointment of the Independent Person may be repeated as often as necessary until a decision is obtained.
 - 22.6 Whenever the Seller and the Buyer have agreed in writing prior to his appointment that the Independent Person shall act as an arbitrator (or if this Agreement expressly provides) then the Independent Person shall act as an arbitrator in accordance with the provisions of the Arbitration Act 1996.
 - 22.7 The Seller and the Buyer shall use all reasonable endeavours to procure that the Independent Person shall give his decision as speedily as possible.
 - 22.8 The cost of appointing the Independent Persons and his costs and disbursements in connection with his duties under this Agreement shall be shared between the parties in such proportion as the Independent Persons shall determine or in the absence of such determination equally between them.

23 GENERAL

- 23.1 This Agreement and any claim or matter arising under or in connection with it shall be governed by and construed in accordance with the law of England and Wales.
- 23.2 The parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction over any claim or matter arising under or in connection with this Agreement.
- 23.3 If any of the provisions of this Agreement remain to be complied with at completion this Agreement shall continue in full force and effect notwithstanding completion.
- 23.4 A person who is not a party to this Agreement shall not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

IN WITNESS of which the parties have signed this Agreement on the date stated at the beginning of this Agreement.

FIRST SCHEDULE

(The Property)

The freehold property known as land on the east side of Mill Road Hertford being part of the property registered at the Land Registry under Title Number HD490269.

SECOND SCHEDULE

(Planning Condition)

1 INTERPRETATION

In this Schedule, unless the context requires otherwise, the following definitions apply:

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| “1990 Act” | the Town and Country Planning Act 1990; |
| “Appeal” | all or any of the following, as the case may be: a) an application to the Secretary of State under sections 78 and 79 of the 1990 Act against a Planning Refusal; b) a Call-In; |
| “Call-In” | the retrieval of a Planning Application for the Secretary of State’s own determination under section 77 of the 1990 Act; |
| “Development” | the development of the Property as [<i>insert the description of the development for which planning permission is to be obtained</i>]; |
| “Final Long Stop Date” | []; |
| “Independent Surveyor” | a Fellow of the RICS with at least 15 years experience including at least five years experience in the field of town and country planning and planning permissions for developments of the same type as the Development; |
| “Long Stop Date” | the date which is [<i>number</i>] [<i>months/years</i>] from the date of this Agreement unless on that date paragraph 9.2 applies; |
| “Onerous Condition” | a condition imposed in a Planning Permission or imposed or to be imposed in a Planning Agreement which falls within any of the subparagraphs of paragraph 2; |
| “Planning Agreement” | any agreement required by a competent authority to be entered into as a precondition to the grant of Planning Permission (including a unilateral undertaking pursuant to section 106 of the 1990 Act); |
| “Planning Application” | any application for [<i>outline/full</i>] planning permission for the Development submitted by the Buyer in accordance with this Schedule; |
| “Planning Counsel” | a practising planning barrister who has taken silk (a Queens Counsel), is a member of the Planning and Environment Bar Association and has not less than 15 years’ call at the planning bar and who is experienced and competent to give advice in respect of and to handle the formulation of planning |

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| | applications; |
| “Planning Permission” | a planning permission granted pursuant to a Planning Application; |
| “Planning Refusal” | any of the following: <ul style="list-style-type: none"> a) a refusal by the local planning authority of a Planning Application; b) a refusal by or on behalf of the Secretary of State to grant planning permission following an Appeal or a Call-In; c) a deemed refusal arising under section 78(2) of the 1990 Act; or d) the grant of a Planning Permission which is not a Satisfactory Planning Permission; |
| “RICS” | Royal Institution of Chartered Surveyors; |
| “Satisfactory Planning Permission” | a Planning Permission: <ul style="list-style-type: none"> a) which does not contain an Onerous Condition; or b) which contains an Onerous Condition but which the Buyer elects to waive pursuant to paragraph 10.3; or c) which is deemed to be a Satisfactory Planning Permission pursuant to paragraph 10.6; |
| “Secretary of State” | the Secretary of State for Communities and Local Government (or such successor secretary of state or minister of state who shall assume the same decision making powers from time to time). |

2 ONEROUS CONDITIONS

An Onerous Condition is one which contains an obligation or restriction of any one or more of the following kinds:

- 2.1.1 it requires the payment or expenditure of money or other consideration in excess of £[] on works outside the Property;
- 2.1.2 it limits the occupation and/or use of the whole or any material part of the Property to any designated occupier or class of occupier (whether by imposing a geographical qualification upon proposed occupiers or otherwise);
- 2.1.3 it prevents development of the Property without the agreement or co-operation of an independent third party which cannot be obtained on terms at a cost or within a time that in any such case is reasonable in the circumstances;
- 2.1.4 it has the effect of making the Planning Permission personal to the Buyer;
- 2.1.5 it has the effect of granting a temporary Planning Permission;

3 THE PLANNING CONDITION

- 3.1 Subject to paragraph 3.2 the Planning Condition is the grant of a Satisfactory Planning Permission.
- 3.2 Following the grant of a Satisfactory Planning Permission the Planning Condition will not be treated as satisfied until:
 - 3.2.1 in the case of a grant by the Secretary of State the period of six weeks shall have expired without any person who is aggrieved making an application to the High Court under section 288 of the 1990 Act; or
 - 3.2.2 in the case of a grant by the local planning authority the period of three months and seven days shall have expired without any person who is aggrieved making an application to the High Court for judicial review in accordance with the Civil Procedure Rules; or
 - 3.2.3 in any such case where an application to the High Court is made pursuant to paragraphs 3.2.1 or 3.2.2 the application shall have been finally disposed of leaving in place a Satisfactory Planning Permission.

4 APPLICATION AND NEGOTIATIONS FOR PLANNING PERMISSION

- 4.1 Within 15 Working Days after the date of this Agreement, the Buyer shall submit to the Seller for approval the Buyer's proposed Planning Application.
- 4.2 Within 15 Working Days after the Seller has received the Buyer's proposed Planning Application the Seller shall notify the Buyer in writing that the Seller either approves or objects to the proposed Planning Application. If the Seller fails to give the Buyer this notification within the time specified, the Seller will be deemed to have approved the proposed Planning Application.
- 4.3 If the Seller objects to the proposed Planning Application, the Buyer shall submit a revised proposed Planning Application to the Seller for approval within 20 Working Days of receiving notification of the Seller's objection. The procedure set out in paragraph 4.2 will apply to the revised proposed Planning Application as if it were the first proposed Planning Application. The Buyer shall continue to submit revised proposed Planning Applications to the Seller for approval within the time limit specified in this paragraph until a proposed Planning Application is approved by the Seller.
- 4.4 The Seller shall not unreasonably withhold or delay giving approval to any proposed Planning Application submitted to it.
- 4.5 Within 15 Working Days after the Seller has approved or is deemed to have approved the Buyer's proposed Planning Application the Buyer shall at its own expense submit the Planning Application in the joint names of the Buyer and the Seller to the local planning authority and shall take all steps necessary and use all reasonable endeavours to obtain a Satisfactory Planning Permission.
- 4.6 Before and following the submission of the Planning Application the Buyer shall if requisite or desirable in order to obtain a Satisfactory Planning Permission enter into discussions or negotiations with the local planning authority.

- 4.7 The Buyer shall not withdraw a Planning Application or amend or vary a Planning Application or submit further planning applications (other than duplicates of a Planning Application) without the Seller's prior written consent (such consent not to be unreasonably withheld or delayed).
- 4.8 The Buyer may only with the written consent of the Seller (such consent not to be unreasonably withheld or delayed) agree with the local planning authority the extension of the statutory period for the giving of notice of its decision under section 78(2) of the Planning Act.

5 THE BUYER TO KEEP THE SELLER INFORMED

In conducting discussions or negotiations with the local planning authority the Buyer shall:

- 5.1 keep the Seller and its planning consultants and solicitors fully informed of all applications, the progress of applications, correspondence, meetings, negotiations, proposals and proceedings;
- 5.2 allow the Seller and its planning consultants to attend such meetings and to participate in them; and
- 5.3 have due regard to the reasonable requirements of the Seller.

6 CO-OPERATION OF THE SELLER

- 6.1 The Seller shall co-operate with the Buyer and use all reasonable endeavours at the Buyer's expense to assist the Buyer to satisfy the Planning Condition but in so doing the Seller shall not act independently of the Buyer.
- 6.2 The Seller shall keep the Buyer fully informed of all action it may take in accordance with paragraph 6.1.
- 6.3 Without prejudice to the generality of paragraph 6.1 the Seller shall, if it is necessary to do so to procure the grant of a Satisfactory Planning Permission, at the request and cost of the Buyer enter into a Planning Agreement in such form as may be reasonable in the circumstances, but if so then:
- 6.3.1 such Planning Agreement must stipulate that the obligations shall only become operative if the development to which they relate is begun by a material operation as defined in the Planning Agreement or if there is no definition in the Planning Agreement in the 1990 Act;
- 6.3.2 such Planning Agreement shall not be such as to impose liability on the Seller after the Seller has disposed of all of its estate or interest in the Property; and
- 6.3.3 the Buyer shall indemnify the Seller against all liability arising under or in respect of the Planning Agreement.

7 APPEAL AGAINST PLANNING REFUSAL

- 7.1 The Buyer may but will not be obliged to make an Appeal against a Planning Refusal but if the Buyer does make an Appeal:
- 7.1.1 it shall do so at its own expense; and
- 7.1.2 it shall not withdraw the Appeal unless the Seller otherwise agrees.

- 7.2 Any Appeal shall be in the joint names of the Buyer and the Seller and in a form previously approved in writing by the Seller (such approval not to be unreasonably withheld or delayed).
- 7.3 The Buyer shall prosecute the Appeal with all due diligence and shall conduct its part in the Appeal in a good and efficient manner.
- 7.4 In prosecuting the Appeal the Buyer shall:
- 7.4.1 keep the Seller and its planning consultants and solicitors fully informed of all relevant information with respect to the Appeal including all correspondence, notifications, meetings, instructions to and advice of counsel and evidence of expert and other witnesses and the dates of any inquiry hearing or for the submission of written representations;
 - 7.4.2 allow the Seller and its planning consultants to attend at conferences with counsel and other relevant meetings; and
 - 7.4.3 have due regard to the reasonable requirements of the Seller.
- 7.5 The Buyer shall indemnify the Seller against all liabilities whatsoever arising out of or in connection with a Planning Application and any Appeal and in particular the Buyer shall indemnify the Seller against any award of costs made in respect of an Appeal or other proceedings in relation to the Planning Application.

8 TERMINATION

- 8.1 If the Planning Condition cannot be satisfied by the Long Stop Date as may be extended in accordance with the provisions of paragraph 9.2 but not beyond the Final Long Stop Date then either the Seller or the Buyer may terminate this Agreement by serving notice on the other and such termination shall have effect on the date on which the notice is served.
- 8.2 The Buyer may only terminate this Agreement pursuant to paragraph 8.1 if it has observed and performed its obligations in this Schedule.
- 8.3 Upon such termination the Seller shall forthwith return the Deposit to the Buyer and the Buyer shall at its own expense remove any notice restriction or Land Charge entry made against the Property in respect of this Agreement.
- 8.4 The termination of this Agreement under clause 8.1 and the provisions of clause 8.3 shall operate without prejudice to any rights which may have accrued to either party against the other as a result of any breach of any of the terms of this Agreement.

9 TIME LIMITS

- 9.1 If the Planning Condition shall not have been satisfied in accordance with paragraph 3.2 by the Long Stop Date then subject to paragraph 9.2 the Buyer will be treated as unable to satisfy the Planning Condition and this Agreement will be capable of termination under paragraph 8.1.
- 9.2 If by the Long Stop Date:
- 9.2.1 the Buyer has made an Appeal or the Planning Application is subject to a Call-In but the Secretary of State shall not then have issued his determination or decision the Long Stop Date for satisfaction of the Planning Condition may at the Seller's

discretion be extended until after the grant of Planning Permission by the Secretary of State and the periods referred to in paragraphs 3.2.1 and 3.2.2 have expired or the final disposal of the proceedings referred to in paragraphs 3.2.1, 3.2.2 and 3.2.3 whichever is the later; or

9.2.2 Planning Permission has been granted but the periods referred to in paragraphs 3.2.1 and 3.2.2 shall not then have expired or proceedings referred to in paragraphs 3.2.1, 3.2.2 and 3.2.3 shall then be in progress the Long Stop Date for discharge of the Planning Condition shall be extended until the expiry of the said periods or the final disposal of the said proceedings whichever is the later.

9.3 Notwithstanding the provisions of paragraphs 9.2.1 and 9.2.2 the Long Stop Date shall not be extended beyond the Final Long Stop Date.

10 NOTIFICATION OF PLANNING DECISIONS

10.1 The Buyer shall promptly notify the Seller of any decision it may take as to the making amending or resubmission of any Planning Application or the making of an Appeal and shall comply with paragraph 4.7.

10.2 The Buyer shall within ten Working Days of the receipt of a Planning Permission:

10.2.1 send a copy of the Planning Permission to the Seller; and

10.2.2 give notice in writing to the Seller as to whether the Planning Permission is a Satisfactory Planning Permission or whether in the Buyer's opinion it is subject to an Onerous Condition and give the reason why the Buyer considers that it constitutes an Onerous Condition.

10.3 The Buyer shall notify the Seller in writing of a Planning Refusal within four weeks after the date of the Planning Refusal and shall at the same time notify the Seller in writing whether it intends to make an Appeal.

10.4 The Buyer may waive its right to treat a Planning Permission as a Planning Refusal because of the presence of an Onerous Condition by giving to the Seller notice in writing to that effect within ten Working Days of the receipt of the Planning Permission whereupon a Planning Refusal will be converted into and treated as the grant of a Satisfactory Planning Permission.

10.5 If there is any dispute as to whether a Planning Permission is subject to an Onerous Condition such dispute shall be referred for determination by the Independent Person in accordance with clause 22.

10.6 If the Buyer does not notify the Seller in writing within ten Working Days of receipt of a Planning Permission that it considers that any condition is an Onerous Condition and the reason for this then the Planning Permission will be deemed to be a Satisfactory Planning Permission.

11 NOTICES AND NOTIFICATION

11.1 Notice or notification required to be given under the provisions of this Schedule shall be in writing.

- 11.2 Any notice required to be given shall be treated as properly given if compliance is made with the provisions of section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

SIGNED by [*NAME OF PERSON*])
duly authorised for and on behalf of)
BRB (RESIDUARY) LIMITED) Director

SIGNED by [*NAME OF PERSON*])
duly authorised for and on behalf of)
[COMPANY NAME]) Director