

Schedule 1.
Overage

"Accounting Records" has the meaning ascribed in paragraph 2.2.1 below;

"Appraisals" means the appraisals annexed to this Agreement in Annexure 9

"Building" means each building forming part of the Development and the curtilage or amenity land of such Building identified in the Design Documents as Block A, Block B and Block C and identified as such;

"Building Costs" means each and every sum which the Project Manager confirms in writing is properly payable under the Building Contract(s) including any Cost Overruns;

"Calculation Date" 20 Working Days before each Payment Date;

"Code" means the Code of Measuring Practice published by the Royal Institution of Chartered Surveyors current at the time of the Trigger Date;

"Commercial Block" means any part of or one or more of the Buildings on the property comprising one or more Commercial Units which is reasonably capable of disposal as a single entity;

"Commercial Unit" has the meaning ascribed in clause 1

"Connected Party" means a "subsidiary" or a "holding company" of the Developer (and such terms have the meanings ascribed to them by section 1159 of the Companies Act 2006) and/or any person or company connected to the Developer or any Director of the Developer and "Connected" has the same meaning as given to such term in section 252 of the Companies Act 2006 or section 1122 and 1123 of the Corporation Tax Act 2010;

"Cost Overrun" means any increase in the total Building Costs as identified in the Appraisal;

"Development Proceeds" means the aggregate of the following:

- (a) cash paid and arising from a Disposal excluding VAT;
- (b) the Market Value of the consideration arising from a Disposal which is other than cash;
- (c) the Market Value attributable to any deemed Disposal;
- (d) all deferred consideration received following a Disposal with a Continuing Financial Interest;
- (e) all Receipts;
- (f) on the last Trigger Date a sum equal to the Market Value of any part of the Development or any interest in the Development in respect of which there has not

been a Disposal or a deemed Disposal (based on an assumption that the Development has been physically completed in accordance with the Developer's obligations under this Agreement) and including without limitation the value of the right to receive

- (g) any deferred consideration on a Disposal with a Continuing Financial Interest; and
- (h) any rents for each Letting of a term of less than 20 years
- (i) any "tenant incentives provided" provided they are in keeping with the Qualifying Lease Terms

"Disposal" means the transfer of a freehold interest in the Development or any part thereof or the grant of a lease of the Development or any part thereof for a term equal to or exceeding 20 years;

"Disposal with a Continuing Financial Interest" means a Disposal where the Developer is entitled to receive deferred consideration after the completion of such Disposal (including without limitation, consideration receivable under a forward funding or forward sale agreement and ground rents);

"Funding Costs" means all costs to the Developer pursuant to the Funding Agreement;

"Interest" has the meaning ascribed in clause 1;

"Letting" has the meaning ascribed in clause 1;

"Letting Agent" has the meaning ascribed in clause 1;

"Letting Agent's Fees" means each and every sum payable to the Letting Agents in respect of proper and reasonable fees and disbursements incurred in the letting of the Development;

"Market Value" has the same meaning as the definition of "Market Value" of the Royal Institute of Chartered Surveyors Appraisals and Valuations Standards as at the date of the relevant Trigger Date provided that if the said definition or the said manual ceases to be published or used as the basis for valuation in the English property market of investments similar to the Developer's interest in the Development then some other basis of market valuation shall be substituted therefor by agreement between the Council and the Developer or (in default of agreement) by the Expert assuming that the Development Works have been carried out and constructed in accordance with the terms of this Agreement and if the same have been damaged or destroyed by any insured risk that it shall have been fully reinstated;

"Marketing Costs" means each and every sum (excluding only Letting Agents' Fees and or Selling Agent's Fees) payable in respect of proper and reasonable fees and disbursements incurred in the marketing of the Property for Letting or Disposal (as applicable);

"Net Internal Area" means the net internal area measured in accordance with the Code;

"Overage" means the sum calculated and paid in respect of both Phase 1 and Phase 2 or the Phase 2 Alternative (as the case may be) in accordance with the provisions of paragraphs 3 and 4;

"Payment Date" means every 31 March after the first Trigger Date;

"Payment Period" means the period of 12 months ending with a Payment Date;

"Permitted Disposal" means any of the following:

- (a) any Disposal to a service authority or to a utility company which acquires an interest in the Development in order to provide water, gas, electricity, communications, services or foul or surface water disposal facilities to or from the Development;
- (b) any Disposal or dedication of highway or of public open space pursuant to a Statutory Agreement;

"Qualifying Lease Terms" means a lease of a Building or part of a Building (including an agreement to a Lease) on the following terms:

- (a) for a term as is institutionally acceptable for an occupational lease having regard to the open market;
- (b) at a starting rent of not less than the open market rental value of the Building (or relevant part of the Building) with vacant possession between a willing landlord and a willing tenant without a fine or premium and having regard to rental values for comparable premises available on the open market;
- (c) on a full repairing and insuring basis (or in respect of part of the Building) subject to a proportion or contribution to the costs of repairs of and services to the common parts of the Building by means of a comprehensive service charge;
- (d) on the basis of upward only rent reviews of not less than 5 yearly intervals;
- (e) such other provisions including initial rent free periods or suitable allowance for fitting out as are consistent with institutionally acceptable open market practice at the date of the Letting;
- (f) and otherwise be consistent with the Letting Strategy

"Qualifying Tenant" means a person who is not a Connected Party and who satisfies any of the following criteria:

- (a) a person or entity which is consistent with the terms of the Letting Strategy;

- (b) a person whose net profit after tax for each of the last three accounting periods prior to the relevant Letting is more than 4 times the commencing annual rent under the relevant Letting;
- (c) a government department of agency of the Crown or statutory undertake or non-governmental public body funded directly by HM Treasury; or
- (d) a person who is able to procure a guarantor to guarantee the relevant Letting (including the period of any authorised guarantee agreement) and which fulfils any of the criteria within (a) or (b) of this definition

"Receipts" means (on the basis that any item shall be taken into account once only) the aggregate of all income premiums capital payments allowances grants interest and other sums (net of any VAT included thereon for which the Developer is liable to account to HM Revenue & Customs) whether of an income or capital nature to the extent that they are received by or on behalf of the Developer at any time on and from the date of this Agreement up to and including the Trigger Date (and which shall be apportioned as necessary) in respect of the whole or any part or parts of the Development (or if any such sum shall not be ascertained at the Trigger Date a reasonable estimate in respect thereof) including without limitation:

- (a) all rent payable under all Lettings and any lettings of Residential Units
- (b) all other income or other sums or consideration (including capital sums) payable in respect of any use or occupation of the Development or any part thereof or the fitting out of any Unit or any right or quasi right easement or quasi easement wayleave, benefit or entitlement or other interest
- (c) any entitlement to the proceeds of any insurance policy
- (d) all rent licence fees premiums profits and other sums attributable to the use and enjoyment of all parts of the Development that are underlet or otherwise occupied or exploited or to the purchase of any interest in it
- (e) any insurance moneys in respect of loss of the items mentioned in clause 17 and/or in respect of damage to or destruction of the whole or any part or parts of the Development and/or the Site and/or in respect of losses consequent on the same and in respect of items of Building Cost
- (f) all amounts from the Building Contractor and the Professional Team and any third party
- (g) all damages

- (h) all advertising revenues
- (i) all sums generated by the recycling of waste
- (j) any reimbursement to the Developer of any item previously treated as a Development Cost
- (k) any grant or subsidies paid to the Developer in respect of or arising out of the Development
- (l) all payments and contributions from third parties in respect of the Lettings
- (m) all sums in respect of any service supply or facility offered by or on behalf of the Developer at or from the Development and/or from any other exploitation of the Development (and this paragraph shall include but not be limited to any e-commerce activity service facility or other exploitation)
- (n) VAT repaid or reimbursed to the Developer (whether by way of input credit or otherwise) to the extent that such VAT shall previously have been taken into account as a Development Cost and
- (o) any other sums that ought reasonably and properly to be brought into account as a receipt as part of this definition and
- (p) Interest received on any of the foregoing items

provided that in calculating the Receipts the Developer shall be deemed to have received (or be entitled to receive) the Receipts notwithstanding any assignment or other form of divestment of the right itself to receive the Receipts or the payment thereof to a third party (unless and to the extent that the result of such arrangement is to set-off such Receipts in the hands of such third party against costs that would otherwise be charged to the Developer by the third party and be brought into account as Building Costs)

"Relevant Expenditure" means the aggregate of the following items of expenditure whether incurred before or after the date of this Agreement:

- (a) the Building Costs and the Project Manager's fees pursuant to their Appointment (excluding in each case any which might be payable for or as a result of any unauthorised departure from or necessity to cure defects or omissions in the Development Works) and Selling Agents' Fees and Letting Agents' Fees and Marketing Costs; and
- (b) all other items of expenditure whether of a capital or revenue nature which have been or shall from time to time be reasonably and properly incurred by the Developer in contemplation or pursuance of or in any way relating to the Development or in carrying

out and completing the Development Works or the provisions of this Agreement including:

- (i) the acquisition of the Development by the Developer and the perfection of the Developer's title to the Property including all Stamp Duty Land Tax and Land Registry fees;
- (ii) the carrying out of the Development Works;
- (iii) the preparation perusal or approval of all or any plans elevations sections drawings specifications bills of quantities applications or other such documents and things related to the Development;
- (iv) the preparation negotiation completion perfection protection stamping and registration of any agreement or other document (whether between the parties hereto or otherwise) relating to the Development;
- (v) amounts properly payable pursuant to any Planning or Statutory Agreement and the cost of entering into wayleave and other agreements with third parties including any relevant authority in connection with the Development;
- (vi) the Developer's consultants' reasonable and proper fees and the proper and reasonable professional fees of such other consultants as the Developer may properly consider appropriate in the circumstances and the payment of all other requisite fees incurred by it in relation to the Development;
- (vii) any rates on unoccupied property (which could not have been avoided had a proper application for relief from rates been made to the local charging authority) except for rates properly charged upon or chargeable to any third party including the tenant under a Lease or any agreement for lease granted by the Developer;
- (viii) legal fees;
- (ix) any service and insurance charges or other outgoings paid or suffered by the Developer in respect of the Development or any part thereof and not capable of recovery from any third party including any tenant under a Lease or any Agreement for Lease of the whole of the Development or (if capable of recovery) not received by the Developer;
- (x) the costs of all insurances connected to the Development (or a fair proportion if part of a general insurance policy) effected by the Developer;

(xi) the proper and reasonable costs incurred by the Developer's Representative in the approval monitoring co-ordination and inspection of the tenant's fitting out works unless borne by the tenant;

(xii) the Funding Costs;

(d) any irrecoverable VAT which is properly payable by the Developer on any payment by it under or in connection with the provisions of this Agreement;

"Residential Unit" means any physically practically completed flat, maisonette or other unit (and its curtilage) designed for residential occupation (and "Residential Units" is to be construed accordingly);

"Selling Agents" means the agents appointed by the Developer to market, lease or sell the Developer's interest in the Development;

"Selling Agent's Fees" means each and every sum payable to the Selling Agents in respect of proper and reasonable fees and disbursements incurred in relation to a sale;

"Trigger Date" means the date of any and each Trigger Event;

"Trigger Event" means each of:

- (a) the legal completion of each Disposal or each deemed Disposal;
- (b) the date being 3 months following Practical Completion of Phase 1;
- (c) the date being 3 months following Practical Completion of Phase 2 or the Phase 2 Alternative (as the case may be);
- (d) the date being 60 months following the date of this Agreement;

"Unit" means any separate Commercial Unit or Residential Unit to be constructed as part of the Development (and "Units" is to be construed accordingly).

OPERATIVE PROVISIONS

1. Lettings

- 1.1. The Developer may secure Lettings prior to any Disposal of a Commercial Unit.
- 1.2. The Developer must use reasonable endeavours to procure that any Letting is granted on Qualifying Lease Terms to a Qualifying Tenant and consistently with the provisions of clause 18.
- 1.3. Each Letting shall be notified in writing to the Council by the Developer and accompanied by a Transaction Approval Form as set out in clause 18.

- 1.4. Where a proposed Letting is not let on Qualifying Lease Terms then the Developer may request Council's consent to the Letting as set out in clause 18.
2. **Open Book**
- 2.1. So far as practicable the Developer shall operate a single development account in respect of the Development into which all Receipts and Development Proceeds shall be paid and held and to which all Building Costs and Relevant Expenditure shall be debited in order to mitigate any Interest charges
- 2.2. The Developer will from the date of this Agreement until the Overage (if any) has been finally agreed or determined as appropriate and (in either event) paid to the Council:
- 2.2.1. keep (or procure that there are kept) at a place in England or Wales all accounting and other books documents and records whether in a manual or electronic or other form (including computer hardware/software and other recording (including time recording) and storage systems bank statements and tax returns) which ought to be kept having regard to good accounting practice and good estate management for the purpose of ascertaining and verifying the Development Cost, Relevant Expenditure, the Development Proceeds and the Receipts ("the Accounting Records")
- 2.2.2. record and maintain all relevant information in the Accounting Records:
- 2.2.2.1. in pounds sterling or other principal domestic currency of the UK and
- 2.2.2.2. in accordance with the relevant Statement of Recommended Accountancy Practice ("SORP") from time to time (if any) and
- 2.2.2.3. otherwise in accordance with good accounting practice and good estate management
- 2.2.3. make available to the Council at all reasonable times on reasonable demand (and with five Working Days' written notice) for inspection the Accounting Records and copies of all supporting vouchers receipts documents and other evidence to verify the same ("the Vouchers") and the Council (and any other party so directed) and the Specialist shall be permitted to copy (at their own expense) and retain the same without charge
- 2.3. Two months prior to the Calculation Date the Developer shall provide the Council for its information with a detailed written breakdown of:
- 2.3.1. the then current sums which in the Developer's reasonable opinion are likely to form part of the Building Costs and the Receipts and

- 2.3.2. the Developer's reasonable estimate of the anticipated future sums likely to form part of the Building Costs and the Receipts and
- 2.3.3. the Developer's reasonable estimate of the likely Relevant Expenditure and the Development Proceeds
- 2.3.4. the Developer's reasonable estimate of the Overage likely to become payable to the Council
- 2.3.5. all relevant Letting or Disposal documentation (including the Lease, Agreement for Lease, Sale Contracts and Transfer) for each Letting and Disposal completed in the preceding 12 month period

as at (in each case) the Calculation Date and the Council shall be entitled to make representations to the Developer in relation to such information and the Developer shall have due regard to such representations

3. Calculating the Overage

- 3.1. The Overage shall be calculated in accordance with the following formula

In the event that both Phase 1 and Phase 2 or the Phase 2 Alternative (as the case may be) are delivered:

$$O = ((DP - RE) - £4,000,000) \times 50\%$$

O = Overage

DP = Development Proceeds

RE = Relevant Expenditure

- 3.2. The Developer must:

3.2.1. use reasonable endeavours to procure that any Disposal is at the best price reasonably obtainable on the open market; and

3.2.2. procure that there is no Disposal to a Connected Party.

- 3.3. The Developer must use all reasonable and commercially sensible endeavours to maximise the Development Proceeds and contain Relevant Expenditure.

- 3.4. For the purpose of calculating Development Proceeds:

3.4.1. If any part of the Development is disposed of at less than the best price reasonably obtainable on the open market (other than):

3.4.1.1. any Disposal to a service authority or a utility company which acquires an interest in the Development in order to provide water,

gas, electricity, communications, services or foul or surface water disposal facilities to or from the Development;

3.4.1.2. any Disposal or dedication of highway or of public open space pursuant to a planning or statutory agreement;

3.4.1.3. any Disposal to a registered social landlord pursuant to a planning or statutory agreement

then the Market Value of that part of the Development (calculated at the date of exchange of contracts for that disposal) is deemed to be substituted as the Development Proceeds for that Disposal. This Developer is to provide all necessary evidence to support such valuation in the absence of which the Market Value shall be assessed at the Trigger Date.

3.4.2. If any Residential Unit is let (other than for a term exceeding 50 years at a premium) at less than the open market rent then the open market rent is to be substituted as the Development Proceeds for that Letting.

3.4.3. If any Letting is other than on Qualifying Lease Terms to a Qualifying Tenant then Qualifying Lease Terms are deemed to be substituted for such lease terms and the tenant is deemed to have the characteristics of a Qualifying Tenant.

3.4.4. If any Commercial Block is not the subject of a Disposal within the later of:

3.4.4.1. 24 months after the date of Practical Completion of the Commercial Block; or

3.4.4.2. 18 months after the date upon which 90% of the Net Internal Area of the Commercial Units within such Commercial Block have been let

there is deemed (subject to paragraph (3.4.5) to be a Disposal of such Commercial Block at the expiry of the later of such 24 or 18 month periods at its Market Value.

3.4.5. Where there is a deemed Disposal pursuant to paragraph 3.4.4 and any actual subsequent Disposal which is completed within 1 year after the deemed Disposal date but before the final Trigger Date and which realises a value greater or less than the Market Value pursuant to paragraph 3.4.4 for the purposes of calculating Development Proceeds the value so realised is to be substituted for the Market Value so determined.

3.4.6. If there is a Disposal with a Continuing Financial Interest:

3.4.6.1. the Developer must first obtain the Council's approval to the identity of the transferee or lessee (such approval not to be unreasonably withheld or delayed);

3.4.6.2. the Developer must use reasonable endeavours to maximise any further consideration and to enforce the right to receive any further consideration (including the taking of proceedings unless either Counsel advises that a claim has less than a 50% prospect of success or the Developer (acting reasonably) considers that the cost of enforcement action is outweighed by the risk of under recovery.

3.5. In the event that Phase 2 or the Phase 2 Alternative (as the case may be) does not achieve Practical Completion by the date being 60 months from the date of this Agreement then the calculation of the Overage is carried out with the formula amended to be:

$$O = ((DP - RE) - £2,000,000) \times 50\%$$

O = Overage

DP = Development Proceeds

RE = Relevant Expenditure

4. Overage information and Payment

4.1. Within 10 Working Days of the Calculation Date the Developer shall (acting in good faith) provide to the Council a worked calculation of the formula set out in paragraph 3 ("the Calculation") together with:

4.1.1. confirmation of all Trigger Events occurring during the preceding Payment Period;

4.1.2. a copy of all relevant documentation in respect of such Trigger Events including:

4.1.2.1. a certified copy of any agreement(s) entered into by the Developer in respect of any Disposal;

4.1.2.2. a copy of the up to date Appraisal;

4.1.2.3. certified copies of all other correspondence or agreements necessary to ascertain and verify the Development Proceeds

4.1.2.4. such Accounting Records as shall be reasonably necessary to verify the Calculation

4.1.3. payment of any sum which the Calculation shows is due to the Council towards the Overage.

4.2. If the Council disputes the Developer's calculation of Overage it must within 20 Working Days after receipt of the Developer's notice plus additional documentation properly requested under this paragraph serve a counter notice on the Developer of the Council's calculation of Overage.

4.3. If the Council and the Developer have not agreed the amount of Overage within 20 Working Days after service of the Council's counter notice either party may require that the amount of Overage be referred to the Specialist for determination.

4.4. The Developer shall pay to the Council the Overage on each Payment Date.

4.5. The Overage calculations are cumulative over the period until the final Trigger Event at which point a final calculation is made in relation to both Scheme 1 and Scheme 2.

5. **Worked Examples**

5.1. Without prejudice to the other provisions of this Schedule and by way of example only there are set out in:

5.1.1. Annexure 9 two worked examples of the Appraisal and

5.1.2. Annexure 9 two worked examples of the calculation of the Overage based on those Appraisals

all of which are based on hypothetical figures and the Parties agree and acknowledge that the figures quoted in the worked examples are not intended to (and shall not) have any bearing on the agreement or determination of the actual calculation of the Overage

6. **Assignment by the Council**

The benefit of the covenants contained in this Schedule may not be assigned by the Council.

7. **Specialist**

Any dispute concerning any sums payable pursuant to this Schedule must be determined by the Specialist in accordance with the provisions of this Agreement.

8. **VAT**

The sums payable pursuant to this Schedule are exclusive of any value added tax and the Developer will in addition pay any VAT properly chargeable or payable in respect of such sums upon production of a valid value added tax invoice.