

DATED

2008

LANCASTER CITY COUNCIL

- and -

DEVELOPMENT AGREEMENT
in connection with
LAND AT SCOTFORTH ROAD, LANCASTER

S Taylor,
Head Of Legal & Human
Resources
Town Hall,
LANCASTER. LA1 1PJ

Ref: CD

THIS AGREEMENT is made the

day of

2008

BETWEEN

LANCASTER CITY COUNCIL of Town Hall Dalton Square Lancaster LA1 1PJ (“the Council”)

and ** whose registered office is at ** (“the Developer”)

NOW IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

IN this Agreement:

- 1.1 “the Site “ means Land at Scotforth Road, Lancaster
- 1.2 “the Approved Plans” means the layout plans elevations sections and other drawings and specifications describing the Developer’s proposals for the development of the Site
- 1.3 “the Development” means the works described in the Approved Plans including any preparation of the Site
- 1.4 “the Building” means any unit(s) to be erected on the Site in accordance with the Approved Plans
- 1.5 “the Development Programme” means the timetable for the completion of the various stages of the Development approved of or specified in writing by the Council with such variations as may be approved in writing by the Council
- 1.6 the “date of possession” means the date of the execution of this Agreement
- 1.7 “the completion date” means the day of 200X
- 1.8 “the Head of Property Services” means the Head of Property Services of the Council for the time being or such other officer of the Council as the Council may appoint from time to time
- 1.9 words importing one gender shall be construed as importing any other gender
- 1.10 the purchase price is £**
- 1.11 the perpetuity period means eighty years from the date of possession
- 1.12 where any party 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
- 1.13 the clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation

2 LICENCE

- 2.1 **THE** Council grants to the Developer from the date of possession licence and authority for the Developer to enter onto the Site for the purpose of the carrying out of this Agreement but for no other purpose whatsoever and
- 2.2 to make (in so far as the Council can give such authority) such connections as may be necessary with the sewers drains pipes wires and cables now laid or during the perpetuity period to be laid in the roads adjoining or neighbouring the Site so as to enable the Building to be erected upon the Site to be served but for no other purpose

3 OBLIGATIONS OF THE DEVELOPER

- 3.1 **The** Developer undertakes and agrees with the Council:
- 3.1.1 to enter upon the Site as licensee only for the purpose of carrying out the Development and the Developer acknowledges that as between itself and the Council the Council is entitled to possession of the Site subject to the rights of the Developer under this Agreement
- 3.1.2 to take the Site in its existing condition and to make no claim or demand against the Council in respect of any matter or thing arising out of or in connection with the state and condition of the Site or any part of or in connection with the state and condition of the Site or any part of it or which may be encountered by the Developer on the Site however such difficulty may arise
- 3.1.3 to carry out the Development at their exclusive expense and in accordance with the Approved Plans in a good and workmanlike manner to the reasonable satisfaction of the Council diligently continuously and with all practicable speed (and in any event in accordance with the Development Programme) so that the Development shall be completed by the Completion Date
- 3.1.4 in carrying out the Development to use sound materials and to take down and remove any work or materials which shall not be in accordance with statute or building regulations or the Approved Plans or which shall not otherwise have been carried out in accordance with this Agreement within 14 days of service by the Council of notice to do so
- 3.1.5 from the date of entry upon the Site and during the continuance of this Agreement to pay all rates taxes claims assessments and other out goings (if any) now or after the date of this

Agreement chargeable against an owner or occupier of the Site or any part of parts of it remaining unsold during the period of this Agreement

- 3.1.6 not to assign or part with its licence or interest under this Agreement or any part of it except to a bank as security for a loan to enable the Development to be carried out
- 3.1.7 during the Development of the Site to take all reasonable care to avoid damage to adjoining or neighbouring roads and footpaths including their verges and any landscaped areas associated with them
- 3.1.8 not knowingly to do or permit or suffer to be done upon the Site or any part of it during the Development anything which may be or become a nuisance or annoyance or cause damage to the Council or the tenants or occupiers of neighbouring premises except so far as may be reasonable and necessary in the development of the Site as envisaged by the Agreement
- 3.1.9 not to permit any oil or grease or any deleterious objectionable dangerous poisonous or explosive matter or substance to be discharged into the ditches watercourses culverts drains or sewers on or near the Site and to take all reasonable measures for ensuring that any effluent so discharged shall not be corrosive or otherwise harmful to the ditches watercourses culverts drains or sewers or cause obstruction or deposit in them
- 3.1.10 not to excavate for sale or dispose of any minerals earth clay gravel chalk or sand from the Site or permit or suffer any of those materials to be removed except so far as is approved by the Head of Property Services or necessary for the Development
- 3.1.11 not to use or permit or suffer to be used the Site or any part of it for any purposes other than that of performing this Agreement without the previous written consent of the Council
- 3.1.12 to observe and be responsible for ensuring that its employees and sub-contractors and suppliers observe the reasonable directions from time to time given by the Head of Property Services for gaining access to the Site
- 3.1.13 not to erect or build or permit to be erected or built on the Site any temporary structures or advertising signs save such as may be authorised in writing by the Head of Property Services

- 3.1.14 until the completion of the Development to use its best endeavours to maintain the Site in a neat and tidy condition and to prevent so far as may be reasonably practicable any matters or things which may be unnecessarily unsightly or offensive visually or otherwise
- 3.1.15 not to deposit on the Site or make up or manufacture on it any building or other materials or goods except those required for the Development and as soon as the Development is completed to remove immediately from the Site all surplus building and other materials and rubbish
- 3.1.16 in carrying out the Development to do all acts and things required by and to perform the building work for the Development in conformity in all respects with the provisions of all statutes applicable and any orders or regulations made under them (including planning permissions) and the bye-laws or regulations of any statutory undertakers public utilities and other such bodies and to pay all proper fees charges fines penalties and other payments whatsoever which during the progress of the Development may become payable or be demanded by such undertakers utilities or other such bodies in respect of the Development or anything done under the licence and authority granted by this Agreement
- 3.1.17 to indemnify and keep indemnified the Council from and against all claims demands and liabilities however arising in respect of the materials and workmanship used by the Developer in the Development or any part of it
- 3.1.18 to indemnify the Council (notwithstanding any supervision or approval of the Council or any person acting on behalf of the Council) against any liability loss claim or proceeding in respect of any injury or damage whatsoever to any person or to any property real or personal in so far as such injury or damage arises out of or in the course of or by reason of the negligent execution of the Development and to insure against any such liability in an insurance office approved by the Council (such approval not to be unreasonably withheld) and in a sum to be approved by the Council and to pay all premiums in respect of such insurance
- 3.1.19 at all times during the Development to insure the Development in a sum sufficient to cover the cost of reinstating the same completely in the event of total destruction together with professional fees and other expenses incidental to the reinstatement against loss or

damage by fire and any other risk usually insured against in respect of a development of this nature and to pay all premiums and other monies necessary for this purpose

3.1.20 not more than once in each year to produce to the 'Head of Property Services' on demand copies of the policies of insurance maintained under the provisions contained in this Agreement and all receipts as evidence of payment of the current premiums and if so required to have recorded on the policy or policies the Council's interest in it or them as the owner of the Site

4. AGREEMENT FOR SALE OF THE SITE

4.1 **THE** Council agrees with the Developer as follows:-

4.1.1 on the completion date to convey its freehold interest in the Site to the Developer in the Form of Transfer provided by the Council in consideration of the Developer paying to the Council the balance of the Purchase Price due if applicable (amount of the Purchase Price to be agreed)

4.1.2 the Council sells with full title guarantee and the tenure of the land is freehold and the title is contained within the indenture dated _____ made between _____ and _____

4.1.3 in so far as they relate to the Site and are still subsisting the Site is sold subject to any matter or thing registered or capable of registration in the Local Land Charges Registers and all rights of way drainage and other rights easements and privileges which may affect the Site or any part thereof without any obligation of the Council to define the same

4.1.4 the Standard Commercial Property (second edition) shall apply to this Agreement so far as they are not varied by it or inconsistent with it

4.1.5 the completion of this sale shall take place at the offices of the Council's Head of Legal and Human Resources at the Town Hall Dalton Square Lancaster

4.1.6 the Developer shall pay the Council's reasonable legal costs and expenses in connection with the Transfer of the Site

5 FURTHER OBLIGATIONS OF THE DEVELOPER

5.1 **THE** Developer further undertakes and agrees with the Council:

5.1.1 to pay to the Council also on the signing of this Agreement its reasonable legal costs and surveyors fees in connection with the preparation of this Agreement

5.1.2 to pay to the Council on the completion date the sum of £** (being the payment of the remaining percentage of the purchase price, if applicable.)

5.1.3 not to dispose or attempt to dispose of any part of the Site other than in accordance with the provisions of this Agreement

6 AGREEMENT AND DECLARATION

It is agreed and declared that:-

6.1 THE Council's Head of Property Services and other authorised persons may enter upon the Site to view the state and progress of the Development and to inspect and test the materials and workmanship and for any other reasonable purpose including the exercise of the rights given to the Council by this Agreement upon default of the Developer and may enter upon the Site for the removal of any works which are in contravention of this Agreement and the cost of any works carried out by the Council under this clause shall be recoverable from the Developer

6.2 if the Developer:

6.2.1 fails to commence or proceed with the Development with proper diligence or in accordance with the Development Programme within three months of the date of this Agreement or

6.2.2 fail to complete the Development in accordance with the timetable or any agreed extension thereof or

6.2.3 fail to observe and perform in material respects the other stipulations and conditions on its part contained in this Agreement or

6.2.4 fail to remedy the breach of any of the stipulations and conditions on its part contained in this Agreement within one month after receipt of written notice requiring it to remedy the breach or within such reasonable time in excess of one month as may be specified by the Head of Property Services or

6.2.5 enter into liquidation whether compulsory or voluntary (except for the purpose of reconstruction amalgamation or other similar purpose not involving a realisation of assets) or

6.2.6 suffer its goods to be taken in execution

the Council may terminate this Agreement and eject the Developer from the Site and the Development works and erections and fixtures (except the Developer's plant and equipment) on the Site shall be held by the Council with power to dispose of them

PROVIDED ALWAYS that the Council shall not be entitled to exercise any of the rights conferred upon it by this Clause without giving 14 days prior written notice of its intention so to do to any Mortgagee of the Developer of which the Council shall have prior notice and if such Mortgagee shall within one month of receipt of such prior notice indicate to the Council its willingness to complete the Development to assign the benefit of this Agreement or shall supply to the Council:-

- (a) such details as the Council may reasonably require as to the revisions to the Development Programme and the completion of the Development and (in case of a proposed Assignment) details of the proposed Assignee
- (b) a duly perfected covenant in such form as the Council may reasonably require by the Mortgagee or Assignee to carry out and complete the Development and so long as such Mortgagee or Assignee has an interest in this Agreement to observe and perform the covenants and obligations on the part of the Developer hereunder

Upon fulfilment of the conditions hereinbefore referred to this Agreement shall continue in full force and effect but shall thenceforth be construed as though the name of the Mortgagee or the Assignee (as the case may be) were substituted for the name of the Developer herein and the timescales are amended as agreed

6.3 in the event of termination of this Agreement pursuant to clause 6.2 hereof the Developer shall assign or cause to be assigned to the Council the copyright in the Approved Plans or other plans forming part of this Agreement and the design of the Development in so far as may be necessary to enable the Development to be completed

6.4 any relic article or thing whatsoever of antiquity rarity or value which may be found or discovered by the Developer on or upon the Site or any buildings on it shall belong to the Council and be delivered up by the Developer to the Council and immediately any such relic article or thing is found or discovered the Developer shall give notice to the Council and afford all reasonable facilities to the Council to remove the same and the Council shall grant to the

Developer such an extension of the time for the completion of the Development as is reasonable following the Developer's compliance with these provisions

6.5 the Council shall not be under any liability whatsoever in respect of any defect in the design of the Development by reason of having approved the Approved Plans or otherwise

6.6 any information given to the Developer by the Council in this Agreement or otherwise as to the position of sewers wires cables pipes and other conduits within or over the Site or any information given as to levels or soil conditions is to the best of the Council's knowledge correct but is given on the understanding that the Council and its servants and agents shall not be liable for any inaccuracies and the Developer is expected to carry out their own surveys and site investigations

6.7 any notice under the terms of this Agreement or by statute required to be served by the parties to this Agreement shall be sufficiently served by the Council by being left or sent by post to the Developer at its registered office for the time being and by the Developer by being left or sent by post to the Council at the Town Hall Lancaster

6.8 nothing contained or implied in this Agreement shall prejudice or affect the rights power duties and obligations of the Council in the exercise of its functions as a Local Authority and the rights power duties and obligations of the council under all public or private statutes bye-laws orders and regulations may be as fully and effectually exercised in relation to the Site and the Development as if the Council were not the owner of the Site and this Agreement had not been executed by it

6.9 if the Developer is delayed in completing or proceeding with the Development solely by reason of any outbreak of war or civil insurrection or by fire tempest frost or other severe weather or by other unavoidable cause or accident or by any strike or lock-out in the building trade or any kindred trade or by delay or failure of delivery of supplies or materials or by unreasonable delay of the Council in complying with its obligations under this Agreement or by any other authority or body needing to give approval to the Development or provide essential services or by reason of an extension variation or alteration made to the Development (which has been approved by the Council) the Council shall allow such further time for the completion

of the Development as is in all the circumstances reasonable and shall notify the Developer in writing of the extended time

6.10 in the event of any dispute or difference arising between the parties as to the construction of this Agreement or as to the rights duties or obligations of the parties or as to any other matter in any way arising out of or in connection with the subject matter of this Agreement the dispute shall be referred to the arbitration or decision of an independent arbitrator to be appointed by the President for the time being of the Law Society (this Agreement being deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1950 to 1979 or any statutory modification or re-enactment for the time being in force) and it is agreed and declared that the decision of the arbitrator shall be final and binding

6.11 any costs payable by reason of the provisions of clause 6.10 shall be borne initially in equal proportions by the parties and then as may be adjusted by the award pursuant to its provisions

IN WITNESS whereof this Agreement has been executed as a Deed the day and year first before written

THE COMMON SEAL OF THE)
DEVELOPER was hereunto)
affixed in the presence of:-)

THE COMMON SEAL OF THE)
COUNCIL was affixed)
in the presence of:-)

Corporate Director (Finance & Performance)