

**THE URBAN REGENERATION AGENCY
(known as English Partnerships)**

and

LANCASTER CITY COUNCIL

FUNDING AGREEMENT

**relating to
the Morecambe West End Housing Exemplar Project**

Forshaws Solicitors LLP
1-5 Palmyra Square
Warrington
Cheshire
WA1 1BZ

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This Agreement is made this

day of

2005

BETWEEN

- (1) **THE URBAN REGENERATION AGENCY** (known as English Partnerships) of 110 Buckingham Palace Road London SW1W 9SB ("**the Agency**", which includes any statutory successors);
- (2) **LANCASTER CITY COUNCIL** of Town Hall Dalton Square Lancaster LA1 1PJ ("**the Council**")
 - A. The Agency in exercise of its powers pursuant to Section 164 of the Leasehold Reform, Housing and Urban Development Act 1993 and all enabling powers has agreed to make the Total Grant available for the purpose of financially assisting the Project on the following terms and conditions.
 - B. At the date hereof the Agency has expended the sum of **£2,200,000.00 (TWO MILLION TWO HUNDRED THOUSAND POUNDS)** being part of the Total Grant in accordance with the terms of the Collaboration Agreement.
 - C. The Agency has agreed to make the balance of the Total Grant, not exceeding the Maximum Sum, available for the purpose of financially assisting the Site Assembly on the following terms and conditions and the Council accepts the funding in relation to both the Total Grant and the Maximum Sum on the following terms and conditions.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Acquisition Costs" means the following Costs incurred in relation to the acquisition of the Properties hereunder:

- (a) purchase price;

- (b) home loss, basic loss and occupiers' loss payments and disturbance payments to the extent that the same would be properly payable if the Properties or the relevant part thereof were acquired by way of CPO
- (c) Stamp Duty Land Tax
- (d) Land Registry Fees
- (e) any disbursements which a prudent purchaser for value would incur in connection with the purchase of the Properties

"**Advance Payment**" means any payment which the Council is lawfully required to make in respect of the CPO Land under the provisions of sections 52 and 52A of the Land Compensation Act 1973;

"**Agency Costs**" means the costs incurred by the Agency in relation to the Project (whether before or after the date of this Agreement) including:

- (a) legal fees in relation to the negotiation, preparation and completion of this Agreement and the Development Agreement ;
- (b) legal, surveyors, planners and technical consultants' fees and disbursements in relation to advice given generally in relation to the Project and without prejudice to the generality of the foregoing in particular the Selection Process of the Developer;
- (c) project management fees in relation to the Development;
- (d) together with any other Costs incurred by the Agency in relation to the Project with the approval of the Council (such approval not to be unreasonably withheld or delayed)

“Agency’s Logo” means the name “English Partnerships” in the manner and style and together with the accompanying graphic design as the same appear on the letterhead of the Agency;

“Agency Quality and Price Standards” means the standards set out on the English Partnerships web site (www.englishpartnerships - Best Practice - Quality and Price Standards)

“Agency Requirements” means the requirements set out in Schedule 3;

“Base Interest Rate” means the base rate of The Royal Bank of Scotland plc (or such other bank as the Agency may stipulate) from time to time (or such other rate as the Agency shall determine if such base rate shall not be readily ascertainable at any time or times);

“Blight Notice” means a notice served under the provisions of section 150 of the Planning Act in respect of an Outstanding Interest;

“Certificate of Title” means a certificate of title from the Council or the Council’s Solicitors to the Agency in the form annexed to this Agreement as Annexure 1 with such amendments as are agreed between the parties from time to time (such agreement not to be unreasonably withheld or delayed);

“Claimant” means a person entitled to the payment of compensation as a consequence of the making and/or implementation of the CPO who is not an Owner;

“Claim Form” means the claim form annexed to this Agreement as Annexure 4 or in such other format reasonably required by the Agency from time to time;

“Collaboration Agreement” means a Collaboration Agreement dated the 20th day of July 2004 and made between (1) the Agency (2) the Council;

“Collaboration Properties” means properties acquired by the Council with funding provided by the Agency under the terms of the Collaboration Agreement;

“Communications Strategy” means

“Confirmation” means confirmation of the CPO by the Secretary of State;

“Consents” includes any approval, consent, exemption, licence, permission or registration by of or from any governmental or other authority or any other person including but not limited to consents required from any landlord, any adjoining owner or any mortgagee of the Properties or from the local planning authority which are from time to time required in relation to the Project on any part of the Site prior to any Permitted Disposal of the same or otherwise required to enable the same to be lawfully carried out and maintained;

“Costs” means reasonable and proper costs and expenses;

“Council Site” means such part or parts of the Site as are from time to time in the ownership of the Council;

“Council’s Solicitor” means a solicitor (including the City Solicitor of the Council) retained by the Council to fulfil the duties of the Council’s Solicitor under this Agreement;

“CPO” means the compulsory purchase order to be sought by the Council pursuant to Section 226 of the Planning Act in accordance with clause 6.4 of this Agreement;

“CPO Costs” means the aggregate of all compensation costs and expenses payable to all Owners and Claimants and all administrative (but not including internal staff costs)/project management/acquisition/professional other costs and expenses reasonably and properly incurred or to be incurred by the Council from and including the date hereof arising from or in connection with the preparation for and the making and obtaining confirmation of and the implementation of the CPO (whether the same are (where relevant) agreed with the relevant Owner or Claimant or determined by the Lands Tribunal or the court or other competent third party) including without limitation:

- (a) the purchase price or any compensation for or in respect of any Outstanding Interest which the Council acquires:
 - (i) pursuant to the CPO; or
 - (ii) as a result of any Blight Notice; or
 - (iii) by agreement in advance of the CPO;
- (b) any payment under the Compulsory Purchase Act 1965 or the Land Compensation Acts 1961 and 1973 made as a result of the acquisition of or interference with any land interest or right within or over the CPO Land (including for the avoidance of doubt any payment pursuant to sections 23-29 of and Schedule 3 to the Land Compensation Act 1961);

- (c) any statutory interest and any costs payable to any Owner or Claimant (including without limitation interest which may be payable by virtue of the Council taking possession of any land or interest referred to in paragraphs (a) and (b) of this definition before the amount of any payments referred to in those paragraphs have been agreed);
- (d) any legal valuation or other costs and expenses payable to an Owner or Claimant;
- (e) all disturbance home loss basic loss and/or occupiers loss payments to which any Owner or occupier is entitled;
- (f) the purchase price or any compensation (including any payment for severance or injurious affection) payable as the result of the severance of land in common ownership and the cost of accommodation works the Council is required to carry out as a result of the CPO in respect of land not included in the CPO and not otherwise acquired by the Council;
- (g) any Advance Payment;
- (h) any compensation payment pursuant to the provisions of sections 236 and/or 237 of the Planning Act;
- (i) any compensation payable for depreciation payable under Part I of the Land Compensation Act 1973 as a result of physical factors caused by the use of public works comprised in the Development
- (j) all payments arising from or in connection with any Highways Order;
- (k) a sum or sums equal to any VAT arising for whatever reasons whether directly or indirectly as a result of the implementation of the matters

contemplated in this Agreement or in respect of any of the CPO Costs save to the extent that the Council obtains repayment or credit in respect of the same as an allowable input tax;

“CPO Land” means the land (and each and every part of it) in or over which interests or rights are to be acquired pursuant to the CPO;

“the Date of Practical Completion” means in relation to the Development (or where this Agreement expressly so provides, a part of the Development) the date when the Development or (as the case may be) a part thereof is practically complete as evidenced by the architect’s certificate or certificates of practical completion issued under the building contract or building contracts in respect of the Development;

“Decant Strategy” means the strategy devised by the Council and produced to the Agency in accordance with clause 6.28

“Developer” means the developer chosen by the parties through the Selection Process to procure the Development;

“Development” means the development of the relevant parts of the Site in order to construct not less than 103 residential units (or such other number agreed between the parties from time to time) to create a Housing Exemplar Scheme in accordance with the terms of the Development Agreement and the expression **“Developed”** shall be construed accordingly;

“Development Agreement” means the development agreement or agreements to be entered into between (1) the Council (2) the Agency (3) the Developer in a form acceptable to the Agency in accordance with the provisions of clause 6.5;

“Development Brief” means the development brief to be prepared jointly by the parties in accordance with clause [6.17];

“End Date” means the date six years after the Date of Practical Completion of the Development;

“Event of Default” means any of the events or circumstances described in clause 8.1;

“Expert” means the President for the time being of the Bar Council of England and Wales;

“Financial Year” means the Agency’s financial year of twelve months running from the 1st April to the following 31st March;

“Funding” means all funding from time to time advanced by the Agency in relation to the Project (including without limitation funding advanced pursuant to this Agreement);

“Funding Commitment Table” means the table shown in Schedule 1;

“GVD” means any general vesting declaration or general vesting declarations made by the Council pursuant to the CPO;

“Highways Order” means any order made under Part X of the Planning Act or under the Highways Act 1980 and/or any other relevant legislation in relation to the temporary or permanent diversion or closure of any highway or the extinguishment of any right to use or any restriction upon the use of any highway where such order has been made to facilitate the Development;

“Housing Exemplar Scheme” means an exemplary housing scheme that will act as a catalyst for private sector investment and contribute to the regeneration of Morecambe’s West End by tackling the lack of family housing and helping to create a more balanced community with more families and the greater choice of housing and tenure;

“Income” means monies received or other income derived by either party from or otherwise arising from the Site or the Development (including without limitation proceeds of sale or lease and other rental income (subject to clause 6.24.3 together with any interest from time to time accrued thereon but specifically excluding Overage;

“Inquiry” means a public inquiry or public inquiries conducted by a person appointed for that purpose by the Secretary of State to report to him on the objections made to the CPO;

“Intellectual Property Rights” means all patents, trade marks, copyright, moral rights, rights to prevent passing off, rights in designs, know how and all other intellectual or industrial property rights, in each case whether registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Judicial Proceedings” means any application or appeal to the High Court (including subsequent appeal to the Court of Appeal and/or House of Lords) against or in respect of any order action or decision of the Council the Secretary of State or a Court;

“Licence Fee” means the total consideration payable by the Developer for the opportunity of entering into the Development Agreement including payments for the Site but specifically excluding Overage;

“Long Lease” means a lease with a term of 99 years or more (or for such longer or shorter term as may be approved in writing by the Agency such approval (in the case of longer terms) not to be unreasonably withheld or delayed) for which a premium is paid and a rent reserved which is a nominal rent;

“Management” means such of the following services in relation to each Property:

- (a) Works under a statutory obligation;
- (b) Clearing dumped rubbish;
- (c) Re-securing breached properties;
- (d) Removal of graffiti
- (e) Capping of drains;
- (f) Vermin control;
- (g) Removal of central heating systems;
- (h) Removal of service meters;
- (i) Payment of Council Tax and/or Uniform Business Rates;

(j) Provision of security;

together with such other services as are approved in writing by the Agency from time to time;

“Market Value” means open market value as defined in the Practise Statement 3.2 (ps.3.2) of the RICS Appraisal and Valuation Standards (Fifth Edition) published in May 2003 as varied from time to time;

“Masterplan” means ‘Winning back Morecambe’s West End’ adopted as a Supplementary Planning Document by the Council in February 2005;

“Maximum Sum” means (subject to clause 4.6) the sum calculated as the aggregate of **£4,500,000.00 (FOUR MILLION FIVE HUNDRED THOUSAND POUNDS)** and the “Property Disposal Funds”;

“Monitoring and Evaluation Plan” means the monitoring and evaluation plan annexed to this Agreement as Annexure 2;

“Nominated Valuer” means Harris & Willis & Moore of _____ or such other valuer appointed by the Council from time to time (with the approval of the Agency) (such approval not to be unreasonably withheld or delayed)
to be unreasonably withheld or delayed);

“Non-Project Properties” means land and buildings acquired by the Council before the date of this Agreement outside of the Site with funding provided in full or in part by the Agency in accordance with the terms of the Collaboration Agreement;

“ODPM” means the Office of the Deputy Prime Minister;

“Outstanding Interest” means any freehold or leasehold estate or interest in or any lease or tenancy or licence or any other right (including any right to enforce the covenants or obligations or any other matter which in the reasonable opinion of the Council would prevent or interfere with the Development or which would adversely affect the value of the Site) in or over the Site and which is required to facilitate the Development;

“Overage” means that portion of the sums generated and received by one or more of the parties to this Agreement from the Developer through the overage scheme contained in the Development Agreement

“Owner” means any party owning an Outstanding Interest and (if applicable) the successors in title to such party;

“Permitted Disposal” means a conveyance or transfer of the freehold estate or the grant of a Long Lease of the Site or part thereof or a Building Agreement and Licence of the Site or a part thereof (in a form that is reasonably acceptable to the Agency);

“Plan” means the plan attached to this Agreement as Annexure 3

“Planning Act” means the Town and Country Planning Act 1990 as amended and all regulations and orders made thereunder;

“Proceeds” means the total amount of all proceeds received or the amount or value of all consideration received from the Site and/or the Development or any part or parts thereof including Income Overage and the Licence Fee;

“the Project” means the delivery on the Site of a Housing Exemplar Scheme through Site Assembly and the Development;

“Project Champion” mean Neil Clarke of the Agency being the project manager appointed by the Agency in relation to this Agreement or his replacement from time to time notified to the Council;

“Project Manager” means Steve Matthews of the Council being the project manager appointed by the Council in relation to this Agreement or his replacement from time to time notified to and approved by the Agency;

“Project Properties” means land and buildings acquired by the Council before the date of this Agreement inside the Site with funding provided in full or in part by the Agency in accordance with the terms of the Collaboration Agreement;

“Properties” means the land and buildings comprised within the Site and shall unless the context otherwise requires be deemed to include any reference to any part or parts thereof and **“Property”** shall be construed accordingly;

“Property Disposal Funds” means the funds paid to the Agency in accordance to clause 6.2.3

“Publicity Material” means any press release, marketing material, signs or promotional materials produced or associated with the Project;

“Qualifying Expenditure” means the items of expenditure described in clause 4.3;

“Relevant Expenses” means “all reasonable and proper external costs and expenses incurred by the Council in securing the Site Assembly including:

- (a) the negotiation for and acquisition of any Outstanding Interest by agreement in advance of the GVD (including any acquisition made consequent on any Blight Notice);
- (b) the preparation for and making and obtaining confirmation of and the implementation of the CPO including all strategic legal and acquisitions advice;
- (c) the negotiations for the payment of the compensation to Owners and Claimants;
- (d) implementing any sheriff’s warrant procedure necessary to secure vacant possession;
- (e) the service of notice to quit on any tenant of the Council occupying land where possession is required in order to implement the Development;
- (f) all costs charges and expenses in connection with (or in anticipation of) prosecuting or defending (including taking advice from Counsel in connection with) any of the following:
 - (i) any appeal or application for judicial review in respect of the confirmation non-confirmation or partial confirmation of the CPO or the making of the GVD;
 - (ii) any reference to the Lands Tribunal for the determination of the statutory compensation payable in respect of the acquisition of any of the Outstanding Interests;
 - (iii) any reference to the Lands Tribunal following the service of a Blight Notice;

- (iv) any other claim reference or proceedings in connection with or arising out of the compulsory purchase process.
- (g) all costs expenses and other monies awarded against the Council in connection with or arising out of any public inquiry Lands Tribunal reference appeal judicial review and any other claim or litigation (including any reference to the Expert for the determination of any dispute as provided for in this Agreement) except where such costs expenses or other monies awarded arise out of the default of the Council in relation to the Site Assembly

“Restriction” means a restriction in the proprietorship register in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, is to be registered without a written certificate signed on behalf of the Urban Regeneration Agency (known as English Partnerships) of 110 Buckingham Palace Road London SW1W 9SB (or its solicitors)"

or in such other form as the Agency shall from time to time approve (such approval not to be unreasonably withheld or delayed)

(such approval not to be unreasonably withheld or delayed) in writing;

“Restriction Consent” means an irrevocable consent (in a form approved by the Agency) signed by a duly authorised representative of the Council consenting to registration at the Land Registry of a Restriction in the proprietorship register of Restriction Properties;

“Restriction Properties” means Properties which the Agency has provided Funding for;

“Retained Surveyor” means such firm of chartered surveyors suitably qualified and experienced in relation to development of the kind envisaged on the Site and agreed between the parties from time to time;

“RICS” means the Royal Institution of Chartered Surveyors;

“Secretary of State” means the First Secretary of State or other ministry or authority for the time being having or entitled to exercise the powers now conferred upon the First Secretary of State by the Planning Act and the Acquisition of Land Act 1981 and any other relevant legislation and where the context requires shall include a person appointed by the said Secretary of State to make a determination on his behalf;

“Selection Process” means the process to select the Developer in accordance with clause 5.2 of this Agreement

“Site” means land of approximately 1.22 hectares at West End, Morecambe, Lancashire shown for the purposes of identification only edged in red on the Plan;

“Site Assembly” means the acquisition by the Council of the Outstanding Interests;

“Site Assembly Shortfall” means the amount of money reasonably required by the Council at any one date to complete the Site Assembly less the total amount of funding still available at that date for that purpose in accordance with the terms of this Agreement

“Surveyor” means Keppie Massie Surveyors & Property Consultants of [Enrica House 18 Romford Court Romford Place Liverpool L3 9DG or such other duly qualified and experienced surveyor as the Agency shall reasonably approve on the application of the Council and for this purpose the Council (in so far as may be reasonably practicable) shall obtain the reasonable approval to any fee arrangements agreed with such consultants prior to their appointment to act for them in connection with the negotiations with Owners and Claimants relating to:

- (i) the acquisition by private treaty from Owners of the Outstanding Interests (including the amount of consideration payable in respect of such purchase or purchases) or (as the case may be)
- (ii) the amount of compensation due to Owners in respect of the acquisition of those Outstanding Interests by CPO and due to Claimants for compensation otherwise due to them.

“Total Grant” means the aggregate of the Maximum Sum and **£2,200,000.00 (TWO MILLION TWO HUNDRED THOUSAND POUNDS);**

“Valuation” means (as the context shall require) either an individual valuation and survey for each Property prepared by the Nominated Valuer in the joint names of the parties to this Agreement or an individual valuation and survey for each Property by the Surveyor;

“VAT” means the tax known as ‘Value Added Tax’ or any other tax of a similar nature levied from time to time in addition to or in substitution for it;

“Vendors” mean the current owners of any estate or interest in the Properties or the relevant part or parts thereof;

“**Working Day**” means any day other than a Saturday Sunday or a day which is a bank holiday in England and the term “**Working Days**” shall be construed accordingly.

1.2 Interpretation

In this Agreement:

1.2.1 references to:

1.2.1.1 any statute or any section thereof or legislation generally include any statutory extension or modification, amendment or re-enactment of such statutes and include all instruments, orders, bye-laws and regulations for the time being made, issued or given thereunder or deriving validity therefrom, and all other legislation of the European Community that is directly applicable to the United Kingdom;

1.2.1.2 any clause, sub-clause, paragraph, sub-paragraph or schedule without further designation shall be construed as a reference to the clause, sub- clause, paragraph, sub-paragraph or schedule to this Agreement so numbered;

1.2.1.3 a disposal includes the transfer or the grant of any estate or interest (including for the avoidance of doubt the grant of a lease) in the Site or any part thereof and (save where reference is made herein to the completion of a disposal □ hereforesals) includes any contract therefor and “dispose” shall be construed accordingly;

1.2.1.4 this Agreement includes any variations hereto made from time to time and any agreement expressed to be supplemental hereto;

- 1.2.1.5 the Development, Project or Site includes any part or parts thereof;
- 1.2.1.6 this Agreement includes any variations hereto made from time to time and any agreement expressed to be supplemental hereto;
- 1.2.2 “Public Sector Financial Assistance” includes all funding received or receivable by the Council from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998
- 1.2.3 words importing one gender shall include both genders and the singular shall include the plural and vice versa
- 1.2.4 “including” shall be construed so as not to limit the generality of any words or expressions in connection with which it is used
- 1.2.5 a person being connected with the Council shall be construed in accordance with the like provisions as are contained in Section 839 of the Income and Corporation Taxes Act 1988
- 1.2.6 This Agreement confers no permission, consent or approval in relation to funding from the Agency other than for the purposes of Part III of the Leasehold Reform, Housing and Urban Development Act 1993

2. ROLES OF THE AGENCY AND THE COUNCIL

The Council shall use all reasonable endeavours to procure that the Project is completed in accordance with the provisions of this Agreement and subject thereto the Agency shall provide funding for the Site Assembly in accordance with the provisions of clause 4.

3. THE COUNCIL'S REPRESENTATIONS AND WARRANTIES

The Council's represents and warrants to the Agency that:

- 3.1 the Council is validly existing and that the execution on behalf of the Council of this Agreement has been validly authorised and the obligations expressed as being assumed by the Council under this Agreement constitute valid legal and binding obligations of the Council enforceable against the Council in accordance with their terms;
- 3.2 neither the execution of this Agreement by the Council nor the performance or observation of any of its obligations under it will
 - 3.2.1 conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument, obligation or duty to which the Council is bound; or
 - 3.2.2 cause any limitation on any of the powers whatsoever of the Council or on the right or ability of the Council to exercise such powers, to be exceeded;
- 3.3 the Council is not in default under any law or enactment or under any deed agreement or other instrument or obligation by which it is bound so as to affect adversely its ability to perform its obligations under this Agreement;
- 3.3 neither the execution of the Development Agreement by the Council nor the performance or observations of its obligations under it will

- 3.4.1 conflict with or result in any breach of any law or enactment or any other deed, agreement or other instrument, obligation or duty to which the Council is bound; or
 - 3.4.2 cause any limitation on any powers whatsoever of the Council and on the right or ability of the Council to exercise such powers, to be exceeded; and
 - 3.4.3 will be specifically in conflict or contravention of any law or enactment or any deed agreement or other instrument obligation or duty to which the Council is bound in relation to the selection of the Developer as the preferred partner as developer for the Development
- 3.5 all consents, required in connection with the execution, delivery, issue, validity or enforceability of this Agreement have been obtained and have not been withdrawn;
- 3.6 the Council is not under any statutory obligation to undertake the Site Assembly or the Project or any part thereof
- 3.7 no litigation or administrative or arbitration proceeding before any court, tribunal, Government authority or arbitrator is presently taking place, pending or (to the knowledge, information and belief of the Council) threatened against, or against any of the assets of, the Council which might have a material adverse effect on its business, assets, condition or operations or might affect adversely its ability to perform its obligations under this Agreement
- 3.8 all information documents and accounts of the Council submitted to the Agency for its appraisal of the Project for the purposes of this Agreement

were true and accurate on the date they were submitted and no material change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operations or prospects of the Council since such information was provided

- 3.9 the Council has disclosed to the Agency all information which would or might reasonably be thought to influence the Agency in awarding the funding to the Council or the amount thereof
- 3.10 no person having any charge or other form of security over those parts of the Site in the Council's ownership at the date of this Agreement or any other assets of the Council has enforced or given notice of its intention to enforce such security
- 3.11 the Council is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the Project
- 3.12 each Certificate of Title given to the Agency pursuant to the provisions of this Agreement is true and accurate in all respects
- 3.13 no Event of Default has occurred
- 3.14 the representations in clauses 3.1 to 3.13 above will be deemed to be repeated by the Council when each claim for an instalment of funding is submitted pursuant to Clause 4 as if made with reference to the facts and circumstances existing at such date.

4. PAYMENT OF FUNDING

- 4.1 The Agency shall be under no liability to pay Funding to the Council:

- 4.1.1 unless the Agency has received such evidence as it may require (acting reasonably) that the representations and warranties by the Council in this Agreement are and remain true and correct in all material respects and are not misleading;
 - 4.1.2 where an Event of Default has occurred;
 - 4.1.3 other than for or in respect of Qualifying Expenditure;
 - 4.1.4 if the claim or a part of it when aggregated with payments already made by the Agency in the Financial Year in which the claim now submitted is to be paid exceeds the total of the Property Disposal Funds paid to the Agency in that Financial Year and the amount of monies allocated by the Agency in accordance with the Funding Commitment Table **PROVIDED THAT** the Council may request amendments to the terms of the Funding Commitment Table which shall apply if the Agency gives it approval (in its absolute discretion) but in any event the total funding shall not exceed the Maximum Sum;
 - 4.1.5 unless it is satisfied that the conditions in clause 4.2 have been met **PROVIDED THAT** the Agency may, in its absolute discretion, and on such terms as it may specify agree to pay funding to the Council before the conditions in sub-clause 4.2 have been met, but if the Agency does so, this will not prejudice rights to refuse to pay any further funding until those conditions are met
- 4.2 The conditions referred to in sub-clause 4.1.5 are:
- 4.2.1 that the Agency should have received a Valuation confirming that the purchase price paid or payable by the Council does not exceed the Market Value (as at the date of claim for payment of Funding or within

three months prior thereto) of the Property to which such Funding relates and for the avoidance of doubt Market Value in this context excludes any additional payments offered pursuant to the CPO compensation code;

4.2.2 the Agency has received a Certificate of Title showing satisfactory tenure in all respects in relation to the Properties which are the subject of the claim; and

4.2.3 that the Agency shall have received (at the discretion of the Agency) either:

(a) an irrevocable undertaking (in favour of the Agency) from the Council's Solicitor to register a Restriction in relation to the relevant Property upon being transferred to the Council which is the subject of the claim and; or

(b) a Restriction Consent

4.2.4 that claims only relate to expenditure defrayed after the date of this Agreement and in any event within two months of the date of receipt by the Agency of the relevant Claim Form.

4.2.5 that claims are made on a Claim Form on a monthly basis with the first claim to be made on the day of 2005.

4.3 Subject to the provisions of this Agreement the Agency shall pay to the Council funding (not exceeding in total the Maximum Sum) such funding to be used by the Council strictly for the purpose of discharging the following:

4.3.1 the Acquisition Costs

4.3.2 a Valuation fee in such reasonable amount as shall be agreed between the Agency and the Council from time to time

4.3.3 the Council's legal fees in respect of the acquisition of each Property and those of the Vendor's solicitors in respect of the acquisition of each Property in each case in such reasonable amounts as shall be agreed between the Agency and the Council from time to time together with disbursements including Stamp Duty Land Tax and Land Registry fees

4.3.4 the Costs of the Stage 1 Appraisal and the Stage 2 Appraisal

4.3.5 CPO Costs

4.3.6 the Costs of Management

4.3.7 the Relevant Expenses

PROVIDED THAT in relation to clauses 4.3.2 and 4.3.3 the Agency shall only be responsible for Value Added Tax on those fees where the Council is unable to recover the same as allowable input tax

4.4 The Council shall on request supply to the Agency evidence to the satisfaction of the Agency that the expenditure for which any Funding has been paid hereunder has been reasonably and properly incurred and that payment has been made by the Council

4.5 If the Agency shall determine (acting reasonably) that any expenditure previously defrayed and the subject of any Funding is not strictly in accordance with Clause 4.3 or if at any time the Agency has paid more than it is liable to pay under any provision of this Agreement, the Council shall

forthwith on demand in writing pay to the Agency the amount stipulated by the Agency as having been overpaid

4.6

4.6.1 The Agency reserves the right to vary the amount of the Maximum Sum in any of the circumstances mentioned in sub-clause 4.6.2

4.6.2 the circumstances mentioned in sub-clause 4.6.1 are as follows:

4.6.2.1 the Council receives or accepts an offer of any other Public Sector Financial Assistance or other guarantees;

4.6.2.2 in the event that the Agency incurs Agency Costs in which case the Maximum Sum shall be reduced by a corresponding amount

4.6.2.3 where the Agency provides its consent in accordance with clause 6.20

4.7 The Agency may vary or withhold any or all of the payments of funding under this Agreement and/or require repayment of funding already paid, together with interest at the Base Interest Rate from the date of payment to the date of repayment by the Council, if it is required to do so as a result of a decision by the European Commission or as a result of any obligation arising under European Community law or regulations.

5. THE PROJECT

5.1 Stage 1 Appraisal and Stage 1 Approval

5.1.1 the Council will within one month from the date of this Agreement appoint :

5.1.1.1 a suitably qualified firm of chartered surveyors; and

5.1.1.2 a suitably qualified firm of solicitors

in each case with particular experience and expertise in relation to site assembly and matters of compulsory purchase (such approval not to be unreasonably withheld or delayed)

to the Agency (such approval not to be unreasonably withheld or delayed) (**“the Nominated Specialists”**);

5.1.2 as soon as the Nominated Specialists have been appointed (in accordance with clause 5.1.1) the Council will obtain a report from them in conjunction with the Retained Surveyor in the joint names of the both the Council and the Agency which will deal with the following:

the value of any Outstanding Interests at the date

- the value of the Report
- the likelihood of success of the CPO

the anticipated period of time needed to complete Site Assembly

- the anticipated period of time needed to complete Site Assembly (including an Inquiry) if this is felt appropriate

the

- the provision of a development appraisal for the Project

such report to be completed and provided to both the Council and the Agency no later than the 15th day of February 2006 (**“Stage 1 Appraisal”**)

5.1.3 the parties will within ten Working Days from the date of receipt of the Stage 1 Appraisal discuss and decide whether they both believe (acting reasonably) that it is appropriate to give their approval to the Project continuing (“**Stage 1 Approval**”) and in reaching their decision they must agree (acting reasonably) that:

5.1.3.1 the parties can procure a conditional offer from a developer to acquire the Site for the purposes of the Development; and

5.1.3.2 that the developer will offer a Licence Fee that will cover the anticipated shortfall between the value of any Outstanding Interests (by reference to the Stage 1 Appraisal) and the remaining funding available through the terms of this Agreement

and that in the light of their assessment of 5.1.3.1 and 5.1.3.2 and the likely value of the Property Disposal Funds the Project is still viable in the context of this Agreement;

5.1.4 in the event that the parties cannot achieve Stage 1 Approval the provisions of clause 8 of this Agreement shall apply

5.2 **Developer Selection Process**

5.2.1 in the event that the parties achieve Stage 1 Approval they will (as soon as reasonably possible) devise a selection process in conjunction with the Retained Surveyor in order to procure a developer who will be prepared to enter into a contractual commitment to undertake the Development conditionally on the Site Assembly being completed and the granting of a satisfactory planning permission for the Development;

5.2.2 the terms of the selection process shall be agreed between the parties (both acting reasonably) **provided that** the Agency will be entitled to require that the Agency Requirements are incorporated in the selection process agreed;

5.2.3 the parties will use their reasonable endeavours to implement the Selection Process as soon as possible and in any event to secure a Development Agreement no later than the 7th day of November 2006

5.3 **Stage 2 Appraisal**

5.3.1 the Council will no later than the date calculated as three months prior to the Inquiry produce a second report from the Nominated Specialists and the Retained Surveyor in the joint names of both the Council and the Agency which will deal with the following:

5.3.1.1 the value of any Outstanding Interests at the date of the report with particular reference to the earlier land referencing exercise undertaken by the Council and the information available since the date of that exercise;

5.3.1.1.2 the likelihood of the success of the CPO;

5.3.1.1.3 the anticipated period of time needed to complete Site Assembly (including an Inquiry) if this is felt appropriate

5.3.1.1.4 an updated development appraisal for the Project in the light of the Development Agreement and other circumstances prevailing at that time

such report to be completed and provided to both the Council and the Agency no later than two months before the date of the Inquiry (“**Stage 2 Appraisal**”)

5.3.2 the parties will (within ten Working Days of receipt of the Stage 2 Appraisal) discuss and decide whether they both believe (acting reasonably) that it is appropriate to give their approval to the Project continuing (“**Stage 2 Approval**”) and in reaching their decision they must agree (acting reasonably) that the Project is still viable in the context of this Agreement.

5.3.3 once Stage 2 Approval has been achieved the parties will use their respective reasonable endeavours to ensure that the Development Agreement becomes unconditional as quickly as possible and will continue to be bound by the terms and obligations contained in this Agreement

5.3.4 in the event that the parties cannot achieve Stage 2 Approval the provisions of clause 8 of this Agreement shall apply.

6. THE COUNCIL’S OBLIGATIONS

The Council agrees with the Agency that:

6.1 Acquisition

it will take all reasonable steps and use all reasonable endeavours to purchase by negotiation and private treaty Properties from Vendors and Outstanding Interests with the assistance of funding provided pursuant to this Agreement and will not pay for any Property more than the Market Value (together with home loss, basic loss, occupiers’ loss payments and disturbance payments to the extent that the same would be properly payable if the Properties were acquired by way of CPO)

6.2 Non-Project Properties

- 6.2.1 from the date of this Agreement the Council will use its reasonable endeavours to negotiate and complete disposals of Non-Project Properties in favour of suitable purchasers;
- 6.2.2 it shall not without the prior written consent of the Agency complete the disposal of Non-Project Properties in accordance with clause 6.2.1:
- 6.2.2.1 otherwise than by way of conveyance or transfer and in accordance with the purposes set out in the Masterplan;
 - 6.2.2.2 for an amount which is less than Market Value at the time of such disposal
 - 6.2.2.3 without providing the Agency with a copy of the valuation prepared on behalf of the Council in relation to the proposed disposal of the relevant Non-Project Property;
- 6.2.3 the Council will within ten Working Days of completion of any Non-Project Property disposal pay the proceeds of such disposals to the Agency **PROVIDED THAT** the Council may deduct legal and surveying fees reasonably and properly incurred in connection with those disposals provided they have the written approval of the Agency to the fees they propose to deduct;
- 6.2.4 in the event that the Council has not disposed of any Non-Project Properties by the date of Practical Completion of the Development (or the earlier determination of this Agreement) the Council will appoint the Nominated Valuer to dispose of the remaining Non-Project

Properties and such disposals shall be on the basis reasonably required by the Agency but in any event on the following terms:

- 6.2.4.1 to market and dispose of the properties in such lots and on such terms as the Nominated Valuer believes will achieve the best sale price reasonably obtainable so as to discharge the Council's obligations pursuant to Section 123 of the Local Government Act 1972;
- 6.2.4.2 to complete the disposals as quickly as is reasonably practicable in the circumstances;
- 6.2.4.3 in any event not to dispose of any property for less than Market Value without the consent of the Agency
- 6.2.4.4 the proceeds of such disposal are to be treated a Proceeds
- 6.2.4.5 for the avoidance of doubt the reasonable costs of management insurance and site security together with the Nominated Valuer's costs shall be deductible from the monies payable in accordance with the preceding clause

6.3 Collaboration Agreement

- 6.3.1 from the date of this agreement the parties respective obligations and undertakings contained in the Collaboration Agreement will so far as they relate to Collaboration Properties cease to apply and be replaced by the terms and conditions of this Agreement as if the Collaboration Properties had been acquired with Funding on the date of this Agreement **PROVIDED THAT** the terms of this Agreement will cease to apply to Non-Project Properties at the point at which they are disposed of in accordance with the terms of clause 6.2.

6.4 CPO

from the date of this Agreement the Council will use its reasonable endeavours to:

6.4.1 to commence (if appropriate) a formal land referencing exercise within the Site, such exercise to begin no later than the date of conditional exchange of the Development Agreement but earlier at the request of EP if it is reasonable to make such a request

6.4.2 once the Development Agreement has conditionally exchanged to consider making the CPO in order to achieve Site Assembly as soon as reasonably possible (including without prejudice to the generality to the foregoing):

6.4.2.1 to negotiate with Owners who wish to dispose of Outstanding Interests in advance of the Confirmation and to acquire those Outstanding Interests by private treaty in accordance with the terms of this Agreement;

6.4.2.2 once the CPO is made to keep the Agency fully informed of the progress of the CPO and to invite the Agency to attend all relevant team meetings and conferences with the counsel;

6.4.2.3 to agree with the Secretary of State such amendments additions variations and/or modifications to the CPO as it shall reasonably determine to be necessary or desirable to assist in procuring the confirmation of the CPO **PROVIDED THAT** the Council will liaise with and have due regard to the views of the Agency in connection with their proposals in this regard;

- 6.4.2.4 in the event that the CPO is opposed to work with the Agency with the aim of securing the withdrawal of every objection made to the CPO by negotiation with objectors and to seek a negotiated settlement or a solution by means of Alternative Dispute Resolution of any outstanding objections which shall not be settled by normal negotiation methods;
- 6.4.2.5 to obtain the earliest practicable date for holding of the Inquiry, and to prepare for the Inquiry with the co-operation of the Agency;
- 6.4.2.6 to liaise with and have due regard to the views of the Agency in connection with preparation for the Inquiry and in particular the content of the Statement of Case and the nature of all evidence to be submitted to the Inquiry and the overall strategy in relation to its conduct of the Inquiry;
- 6.4.2.7 to notify the Agency of any challenge to the confirmation of the CPO;
- 6.4.2.8 if the CPO is confirmed the Council shall comply with all relevant statutory requirements in relation thereto (including publishing and serving of notice of such confirmation so as to enable the CPO to become operative) as soon as reasonable practicable and to supply the Agency with a copy of the CPO as confirmed and a copy of the CPO Map together with the Secretary of State's decision and any inspector's report;
- 6.4.2.9 in the event that the Secretary of State declines to confirm the CPO whether as to the whole or some part thereof or where a third party applies to the court to challenge the decision of the

Secretary of State the Council shall consult with the Agency as the appropriate reasonable manner in which to respond to such decisions in order to facilitate the implementation of the Development;

6.4.2.10 following Confirmation of the CPO and the same becoming operative the Council shall liaise and have due regard to the views of the Agency in connection with the proposal to secure the vesting of all Outstanding Interests in the Council by the means of a GVD procedure or the notice to treat/notice of entry procedure and to use all reasonable endeavours to secure the vesting of all Outstanding Interests in the Council by means of a GVD procedure or the notice to treat/notice of entry procedure provided that the Council may acquire Outstanding Interest in phases;

6.4.2.11 in the event that the Council shall be served with a Blight Notice the Council will consult with the Agency as to the appropriate manner in which to respond to such Blight Notice so as to ensure that the Council can (following such consultation) respond in accordance with the Agency's wishes within the statutory time limit;

6.4.2.12 as soon as Outstanding Interests shall become vested in the Council under the CPO or under the GVD the Council shall apply to register the same at the Land Registry ;

6.4.2.13 in the event that the Surveyor is unable to agree the amount of any compensation payable to an Owner or a Claimant (if appropriate) the Council shall refer the matter to the Lands Tribunal and liaise with and have due regard to the views of the

Agency in connection of the preparation of the hearing of the reference to the Land Tribunal;

6.4.2.14 to discharge CPO Costs agreed by the Surveyor or determined by the Lands Tribunal

6.4.3 notwithstanding any other provisions of this clause 6.4 the Council shall not be obliged to do or omit to do any act or thing that the doing or omission of which would or may be unlawful or ultra vires or constitute maladministration by the Council and if at any time it appears to the Council that the CPO is no longer in the public interest it shall have the ability to withdraw the CPO without prejudice to the payment of all or any CPO Costs

6.5 **Development Agreement**

6.5.1 it will co-operate fully in the Selection Process to achieve a Development Agreement no later than the [7th] day of [November] 2006 and without prejudice to the generality of the foregoing:

6.5.1.1 negotiate and conclude the Development Agreement in conjunction with the Agency and in particular in accordance with the Agency's Requirements as set out in the Selection Process;

6.5.1.2 act in goodfaith in its dealings with the Agency in relation to the terms of the Development Agreement;

6.5.1.3 comply with its obligations pursuant to the Development Agreement and use their reasonable endeavours to procure the due performance and observance of the obligations of the

Developer (in conjunction with the Agency) pursuant to the Development Agreement;

6.5.1.4 to use all reasonable endeavours to satisfy any conditions precedent within the Development Agreement so that the Development Agreement becomes unconditional as soon as reasonably practicable

6.6 Disposal

6.6.1 it shall not without the prior written consent of the Agency dispose of the whole or any part of the Site except in accordance with the terms of the Development Agreement

6.7 Notices

it shall notify the Agency in writing:

6.7.1 as soon as practicable thereafter, in the event of any material change in the information on the Site Assembly provided for the appraisal of Funding or arising from any event which duly affects the continued accuracy of such information;

6.7.2 as soon as practicable thereafter, in the event of the receipt by it of any other Public Sector Financial Assistance or guarantees, or the offer of the same, in respect of the Project or the Development;

6.7.3 as soon as practicable thereafter of any event which might adversely affect the carrying out of the Development or any part thereof;

6.7.4 as soon as practicable if there are any delays in relation to Site Assembly or it is unable to submit a claim in accordance with the timetable set out in this Agreement;

6.7.5 forthwith on the occurrence of an Event of Default

6.8 Information

it shall provide the Agency with such information as the Agency may require in connection with the obligations of the Council hereunder and compliance with the same

6.9 Inspection

it shall permit the Agency or persons authorised by it to inspect those parts of the Site from time to time owned by the Council and to inspect, audit and take copies of all reports, books, accounting records and vouchers which the Agency considers relevant

6.10 Assurance

at any time upon the written request of the Agency it shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for the Agency the full benefit of this Agreement and of the rights and powers herein granted

6.11 Public Procurement

6.11.1 it shall comply with all applicable European Union Procurement Legislation and any implementing measures and any other legislation in connection with the procurement of any works or any services in respect of which Funding is to be provided by the Agency and shall promptly provide to the Agency any information which the Agency may request in order to satisfy itself that the Council has done so

6.11.2 all procurement of works, equipment, goods and services shall be based on value for money. In determining how this requirement

should be met, the Council must take account of public sector accountability and probity, and shall document the decision making process

6.11.3 in procuring any services or supplies the Council shall comply with the Council's statutory procurement regime from time to time

6.12 Good faith

it shall at all times act with the utmost good faith towards and co-operate with the Agency

6.13 Rates and outgoings

it will be responsible for and discharge all rates taxes assessments impositions and other outgoings in respect of the Properties and any other part of the Site from time to time acquired hereunder and for the avoidance of doubt the Agency will not be responsible for the same and if the Agency is requested or required to pay the same or any of them the Council will forthwith discharge the same and indemnify the Agency in respect thereof

6.14 Restriction

It shall in relation to Restriction Properties:

6.14.1 consent to the registration of a Restriction; and

6.14.2 take all necessary steps to procure the registration of the Restriction including without limitation:

6.14.2.1 procuring that the Council's Solicitor gives and complies with the undertakings referred to in clause 4.2.3(a) in a timely manner;

6.14.2.2 providing a Restriction Consent whenever it is bound to do so;

6.14.2.3 pay the appropriate fee in order to register the Restriction

6.14.2.4 deal with and answer any requisitions relating to the Restriction which are raised by the Land Registry

6.14.3 forward the title information document provided by the Land Registry to the Agency's solicitors within ten Working Days of receipt at the Council's offices

6.15 Forecast Outputs and Outcomes

6.15.1 It shall procure that the outputs and milestones detailed in the Monitoring and Evaluation Plan are achieved in accordance within the timescales set out in the Monitoring and Evaluation Plan.

6.15.2 It shall use all reasonable endeavours to ensure that the outcomes detailed in the Monitoring and Evaluation Plan are achieved within the timescales set out in the Monitoring and Evaluation Plan

6.16 Appropriately qualified staff

It warrants to the Agency that the obligations of the Council under this Agreement shall be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Agency to expect in all the circumstances. The Council acknowledges that the Agency will be relying upon the Council's skill, expertise and experience in the performance of the Project and also upon the accuracy of all representations or statements made and the advice given by the Council in connection with the performance of the Project and the accuracy of any documents conceived, originated, made or developed by the Council as part of this Agreement.

6.17 Development Brief

It will work with the Agency in order to devise and agree a Development Brief for the Site on or before the 28th February 2006 “

6.18 Council’s contractors and employees

It shall:

6.18.1 include in its contracts with suppliers or contractors engaged for the purposes of the Project a written condition undertaking to make payment for the supply of their goods and/or services within thirty days of receipt of the supplier’s or contractor’s invoice (provided that such goods and/or services have been supplied in accordance with the terms and conditions of the relevant contract)

6.18.2 use all reasonable endeavours to ensure that it’s direct employees suppliers and contractors are not claiming any government benefit, where payment of such benefit is precluded due to earnings. The Council shall further use all reasonable endeavours to ensure that it’s direct employees suppliers and contractors who are not EC nationals are legally entitled to be resident in the United Kingdom and, where applicable, have a work permit.

6.18.3 take all reasonable steps to satisfy itself that it’s direct employees suppliers and contractors are suitable and competent in all respects to perform necessary work or tasks in relation to the Project

6.18.4 the Council shall immediately notify the Agency of any claim brought against the Council arising out of or relating to the Project, including (without limitation) any claim made against any supplier or contractor of“ which the Council receives notification.

6.19 **Error! Bookmark not defined.Legislation**

in carrying out its obligations under this Agreement the Council shall (and shall use all reasonable endeavours to procure that its direct employees, agents suppliers and contractors shall) comply in all respects with all relevant legislation (including for the avoidance of doubt any relevant European Directives) and, in this regard:

6.19.1 reasonable evidence shall be provided to the Agency on reasonable request of a policy covering equal opportunities so that there is no unfair discrimination on the grounds of colour, race, creed, nationality or any other unjustifiable basis directly or indirectly in relation to the implementation of the Project and reasonable evidence shall be provided as to the implementation of this policy

6.19.2 it shall comply with all relevant requirements contained in or having effect under any legislation relating to health, safety and welfare at work

6.20 **Material Alteration of the Project**

The Council shall not in any circumstances without the prior written consent of the Agency, make any material alteration to the Project

6.21 **Indemnity**

it shall:

6.21.1 be liable for and shall indemnify the Agency in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Agency or otherwise arising out of or in the course of or caused by the Project and/or the performance or non-performance by the Council of its obligations under this Agreement

6.22.2 be liable for and shall indemnify the Agency against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Agreement or otherwise through the default of the Council

6.23 **Schedule 2**

The provisions of Schedule 2 apply and the Council is to comply with the obligations in that Schedule

6.24 **Management**

6.24.1 following purchase of individual Properties (or from the date of this Agreement in relation to Collaboration Properties) it will do the following for the purposes of the Project:

6.24.1.1 assume responsibility for and meet the costs of Management of the Properties pending disposal of the Site for the purpose of the Development

6.24.1.2 until disposal the Council shall keep the Properties in a safe and secure condition

6.24.1.3 in the event of any of the Properties being destroyed or damaged (if reasonably appropriate) to clear the Site of any such Properties and put the same in a safe and (so far as appropriate) secure condition.

6.24.2 it will not enter into any form of lease, licence or other tenancy arrangement in respect of the Properties save in circumstances where those arrangements will not restrict, hinder or remove the Council's

ability to enter into and proceed with the Development Agreement as anticipated in this Agreement.

6.24.3 any sums generated from leases, licences or other tenancy arrangements entered into pursuant to sub-clause 6.24.2 above shall (after deducting the reasonable costs of implementing the relevant lease licence or other tenancy arrangement as shall be agreed from time to time with the Agency) be treated as Income **SAVE THAT** the Council may deduct a maximum of £12,000.00 net in each Financial Year from the sums generated provided that they are utilised strictly to fund the Communications Strategy

6.25 **Consents**

it shall:

6.25.1 not carry out any work upon the Site without having obtained all necessary Consents for that work and in particular (but without prejudice to the generality of the foregoing) shall not carry out any work constituting development for which planning permission is required under the Town and Country Planning Act 1990 without having obtained detailed planning consent for that work, and shall if requested by the Agency produce to it such documents or copy documents as the Agency may require to demonstrate satisfaction of its obligations under this clause; and

6.25.2 at all times throughout the Project comply with all Consents;

6.25.3 prior to the submission of any planning application to submit (or to procure that there is submitted) to the Agency copies of all plans and drawings to be submitted to the local planning authority and shall obtain (or shall procure that there is obtained) the prior written consent

(such consent not to be unreasonably withheld or delayed in the case of an application in relation to the Development) of the Agency to the design and layout of any works at the Site and to the said planning application

6.26 Insurance

6.26.1 In relation to all parts of the Site that are owned by the Council and pending the disposal of those parts to maintain or procure that there are maintained full and proper insurance policies:

6.26.1.1 (in relation to those parts of the Site which have not been Developed) in respect of third party risks and public liability matters;

6.26.1.2 (in relation to those parts of the Site which are in the course of Development) for works in the full reinstatement or replacement costs thereof from time to time;

6.26.1.3 (in relation to those parts of the Site which have been Developed) for the insurance of the buildings on the Site in the full reinstatement or replacement cost thereof from time to time; and

6.26.1.4 (subject to clause 4.6.2) which (in relation to those parts of the Site which have a leasehold title or are subject to a lease) fulfil the requirements of the lease of the Site or the lease which the Site is subject to;

6.26.2 if the Council reasonably requires the Agency to do so the Agency will release or suspend the Council's liabilities under clause 4.6.1.4;

6.26.3 if requested to supply evidence of such insurance policies to the satisfaction of the Agency;

6.26.4 if any building upon those parts of the Site which is in the course of Development or which has been Developed are destroyed or damaged to procure the rebuilding, reinstatement or replacement thereof;

6.26.5 not do or permit anything which may render any policy or policies of insurance void or avoidable; and

6.26.6 to procure that the interest of the Agency in such insurances is noted and the insurer's written evidence thereof is provided to the Agency upon demand from time to time

6.27 Funding by the Council

on or before the date calculated as eighteen months from the date of this Agreement the Council will utilise **£200,000.00 (TWO HUNDRED THOUSAND POUNDS)** of its own funds towards the discharge of one or more heads of expenditure contained in sub-clauses 4.3.1 to 4.3.7 inclusive and shall provide the Agency with evidence of such payments.

6.28 Preparation of the Decant Strategy

no later than three months before the date of the Inquiry to provide the Agency with a copy of the Council's Decant Strategy for the Site

6.29 Collateral Warranty from the Surveyor

that it will procure a Collateral Warranty from the Surveyor in favour of the Agency in a form reasonably acceptable to the parties within three months of the date of this Agreement

[“

7. PROJECT MONITORING

7.1 Provision of information by the Council

the Council shall:

- 7.1.1 provide quarterly progress reports to the Project Champion from the date of this Agreement until the Date of Practical Completion of the Project in the format annexed to this Agreement as Annexure 4 (subject to such amendments to such format as the Agency may reasonably require from time to time)
- 7.1.2 procure that the Project Manager and/or any other officers of the Council as may reasonably be requested by the Agency shall attend such meetings as the Agency may reasonably request with the Agency and any third parties invited by the Agency to review progress in relation to the Project
- 7.1.3 provide the Agency with such information as the Agency may reasonably require in connection with the Project or any permitted variations thereto from the date hereof to the End Date;
- 7.1.4 from the date of this Agreement until the End Date:
 - 7.1.4.1 provide the Agency with such information as is reasonably available to the Council as to the number of persons employed or to be employed on the Site (whether part or full time) after the Date of Practical Completion of the Development and with such other information as may be reasonably requested by the Agency as to the benefits derived from the provision of funding for the Project

7.1.4.2 include in any instrument giving effect to any disposal of the Site or any part thereof obligations on the person to whom the disposition is made to provide to the Agency information of the kind referred to in sub-clause 7.1.4

7.2 **Inspection and audit facilities**

The Council shall:

7.2.1 until the End Date or, if relevant, for such longer period as may be required by law retain documentary evidence of all capital and revenue purchases to support all amounts claimed from the Agency. These records shall include an invoice register of suppliers' and contractors' invoices and all other documents relating to the carrying out of the Site Assembly funded by the Agency or other amounts claimed under this Agreement.

7.2.2 allow access to its business premises on two Working Days notice during 9.00 am - 5.00 pm to the Agency's internal auditors or its other duly authorised staff or agents, Government Office, European Commission or the National Audit Office to inspect such documents and take copies thereof as the Agency considers necessary in connection with this Agreement. The Agency shall be entitled to interview employees of the Council in order to obtain oral and/or written explanations of documents and the Council shall provide access to the relevant employees at such times as may be reasonably required to enable the Agency to do so. The Agency reserves the right to have such staff or agents carry out examinations into the probity, economy, efficiency and effectiveness with which the Council has used the Agency's resources in relation to the Project and the performance of this Agreement.

- 7.2.3 permit the Agency or persons authorised by it to inspect the Site and to inspect, audit and take copies of all reports, books, accounting records and vouchers which the Agency considers relevant;
- 7.2.4 maintain full and accurate accounts for the Project in accordance with good accounting standards.
- 7.2.4.1 within three months of the Agency paying the Maximum Sum (or, if earlier, the date of termination of this Agreement pursuant to clause 8) audited accounts and an auditors report in the format set out in Annexure 5 must be submitted to the Agency. These must be certified by the Chief Financial Officer of the Council and audited by its external auditors. If the audited accounts, certificate and auditors report have not been received within the above timescale, any final payment of funding may be suspended until receipt of the relevant documentation and/or previous payments of funding shall, if required by the Agency, be repaid

8. EVENTS OF DEFAULT

8.1 An Event of Default occurs where:

- 8.1.1 the CPO is not confirmed on or before the [31s] day of [December] 2008 or if at that date any judicial challenge to the confirmation of the CPO has not been removed or dismissed **PROVIDED THAT** no Event of Default in accordance with this sub-clause shall occur if at the 31st] day of [December] 2008 the CPO has been confirmed but the statutory period of six weeks in which a judicial challenge can be made has not elapsed and no such challenge is made within that statutory period; or

- 8.1.2 the Council has not utilised the sum of £200,000.00 of its own funds towards the discharge of one or more of the heads of expenditure contained in sub-clauses 4.3.1 to 4.3.7 inclusive on or before the date calculated as two years from the date of this Agreement;
- 8.1.3 the Council fails to perform and observe any material obligation on its part contained in this Agreement; or
- 8.1.4 any Consent is irrevocably withdrawn or revoked or expires or is modified or made subject to any condition which in the Agency's reasonable opinion may materially adversely affect the Council's ability to perform and observe its obligations under this Agreement; or
- 8.1.5 any representation or warranty made or repeated by the Council pursuant to this Agreement or in any statement delivered or made pursuant to it, is incorrect when made or repeated and has a materially adverse affect on the Council's ability to perform and preserve its obligations under this Agreement; or
- 8.1.6
- 8.1.6.1 an encumbrancer takes possession or a receiver or administrative receiver or manager or sequestrator is appointed of the whole or any part of the undertaking assets rights or revenues of the Council or a distress or other process is levied or enforced upon any of the assets rights or revenues of the Council and any such action is not lifted or discharged within fourteen days; or
- 8.1.6.2 a petition is presented (other than a petition which, in the opinion of the Agency, is frivolous or vexatious and which is withdrawn or stayed within fourteen days) to, or any order is

made by, any competent court for the appointment of an administrator in relation to the Council; or

8.1.6.3 the Council is, or is adjudicated or found to be, insolvent or stops or suspends payment of its debts or is (or is deemed to be) unable to or admits inability to pay its debts as they fall due or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to the Council under any law regulation or procedure relating to reconstruction or adjustment of debts; or

8.1.6.4 the Council ceases or threatens to cease to carry on the whole or a substantial part of its business; or

8.1.6.5 or the Agency (acting reasonably) is of the opinion that, taking into account the funding to be provided under this Agreement, the Council no longer has the necessary resources and funding to complete the Works; or

8.1.6.6 the whole or any part of this Agreement ceases to be a valid, binding and enforceable obligation or is repudiated by the Council or becomes invalid or unenforceable or is terminated or frustrated; or

8.1.6.7 the Council commits (or being a local authority, any officers or representatives of the Council commit) an act of grave misconduct in the course of the business in relation to the Project only; or

8.1.7 the Council is in the opinion of the Agency (acting reasonably) in material default under any other agreement with the Agency and such default has not been remedied to the reasonable satisfaction of the Agency; or

8.1.8 the Council has not achieved the outputs and milestones set out in the Monitoring and Evaluation Plan; or

8.1.9 the Agency is of the opinion that the Council no longer has the necessary resources and/or funding to comply with its obligations hereunder; or

8.1.10 Stage 1 Approval has not been achieved by the [31st] day of [March] 2006; or

8.1.11 Stage 2 Approval has not been achieved by the [31st] day of [January] 2008; or

8.1.12 the Development Agreement is terminated due to the default of the Council

and for the avoidance of doubt where the Agency claims that if an the Event of Default has occurred and the Council does not agree the matter will be agreed or determined pursuant to clause 18 of this Agreement

8.2 Where an Event of Default has occurred the Agency may by notice in writing to the Council:

8.2.1 suspend the payment of funding under this Agreement for such period as the Agency shall determine

8.2.2 vary the Maximum Sum in which case the payment of funding shall thereafter (subject to the provisions of clause 4 and provided no other Event of Default has occurred and is continuing) be made in accordance with the variation notified to the Council;

8.2.3 terminate this Agreement (subject to any outstanding obligations including those to be performed on termination of this Agreement and in particular the provisions contained within Schedule 2) whereupon the Agency shall cease to be under any obligation to provide any further funding to the Council under this Agreement and to the extent that the funding previously provided to the Council under this Agreement has not been utilised by the Council in accordance with this Agreement the Agency may require the Council to repay the whole or part of any funding previously paid to the Council and the Council agrees that upon receipt of a notice requiring repayment it shall repay the sums required within twenty Working Days of receipt of such notice Provided That where the Council is contractually committed to acquire some part of the Site before the Event of Default leading to the termination of this Agreement occurs (save where the Council knew or ought acting reasonably to have known before being contractually committed that an Event of Default has or was likely to occur) then the Agency shall continue to provide funding in relation to those contractual commitments only notwithstanding that the Agency terminates this Agreement

8.3 Provided always that:

8.3.1 if the Agency shall suspend the payment of funding pursuant to sub-clause 8.2.1 by reason only of the occurrence of an Event of Default specified in sub-clause 8.1.3 which is, in the reasonable opinion of the Agency, capable of remedy and the Council shall, after notice in

writing from the Agency, remedy the relevant breach within such period (as shall be reasonably specified in the notice) as the Agency (acting reasonably) shall determine to be reasonable (or such extended period as the Agency (acting reasonably) may thereafter determine in its discretion) the Agency shall not (subject to the other provisions of this Agreement) continue such suspension after the Council shall have remedied the relevant breach within such period specified by the Agency as aforesaid;

8.3.2 (subject to sub-clause 8.3.3) the Agency shall not by reason only of the occurrence of an Event of Default specified in sub-clause 8.1.3 which is, in the reasonable opinion of the Agency, capable of remedy, exercise its rights under sub-clause 8.2.2 or 8.2.3 unless the Agency shall have first given notice in writing to the Council requiring the relevant breach to be remedied within such period (as shall be specified in the notice) as the Agency (acting reasonably) shall determine to be reasonable (or such extended period as the Agency may thereafter determine in its discretion) and the Council shall have failed to remedy the said breach to the satisfaction of the Agency within the said period;

8.3.3 unless the Agency shall otherwise determine, the provisions of sub-clause 8.3.1 and 8.3.2 above shall not apply where the Agency has prior to the occurrence of an Event of Default had occasion to give notice on the occurrence of a previous Event of Default to the Council under either sub-clause 8.3.1 or 8.3.2;

8.3.4 the exercise by the Agency of its rights under sub-clause 8.2.1 in respect of an Event of Default shall not preclude the exercise thereafter by the Agency of any other rights which it may have under sub-clause 8.2 in respect of the same Event of Default;

8.3.5 the exercise by the Agency of its rights under sub-clause 8.2 shall be without prejudice to any other right of action or remedy of the Agency in respect of any breach by the Council of the provisions of this Agreement.

9. PUBLICITY

9.1 Marketing Material

The Council shall:

9.1.1 acknowledge the receipt of the funding by incorporating the Agency's Logo with the words "This Project received funding from English Partnership" into any Publicity Material;

9.1.2 inform the Agency at least ten Working Days prior to any promotional event relating to the Project

9.1.3 provide at its cost and display in a prominent position upon or immediately adjacent to the Site from a date to be agreed between the parties (both acting reasonably) to the Date of Practical Completion of the Development, a signboard of a size, design and content to be approved by the Agency to the effect that the Agency is providing financial assistance in respect of the Project ;

9.1.4 procure from a date not later than the Date of Practical Completion of the Development that there shall be permanently maintained at its own cost in a prominent position on the Site and affixed in a location to be approved in writing by the Agency a plaque provided by the Agency stating that the Agency has provided financial assistance in respect of the Project

9.1.5 Ensure that all marketing material in respect of the Project including acknowledgement of the Agency's role providing financial assistance

and not issue any such material until the manner in which and the wording by which such acknowledgement is to be given shall have been approved by the Agency

9.2 **Agency's Logo**

9.2.1 The Agency grants the Council during the term of this Agreement a non-exclusive licence to use the Agency's Logo for the purposes set out in sub-clause 9.1. The Council shall not assign or grant sub-licences of this licence or any part of it.

9.2.2 The Council acknowledges that the Agency's Logo is owned by and shall remain the property of the Agency. The Council shall not acquire any rights in respect of such logo by reason of the exercise of the rights granted by this Agreement.

10. **INTELLECTUAL PROPERTY RIGHTS**

10.1 The Project Intellectual Property Rights remain the property of the Council.

10.2 The Council acknowledges that it is a condition of the Agency funding of the Project that they shall be entitled to make publicly available certain agreed information and know how

STEPHEN WOODALL

For and on behalf of

FORSHAW'S SOLICITORS LLP

(e-mail: stephen.woodall@forshaws.co.uk) regarding to or derived from the Project the Agency regards as "best practice" (Project related know how) notwithstanding that this Project Related know-how may constitute Intellectual Property Rights belonging to the Council or a third party and that such Project Related know-how will as a result enter the public domain

10.3 The Council agrees to provide the Agency at the end of the Project and at all other times upon reasonable request with complete copies (where relevant)

and access to full details of information and know-how relating to or derived from the Project (including the methods by which the Project was conducted). The Council shall provide whatever assistance and explanation as reasonably required by Agency to enable it effectively to exercise the right referred to in clause 10.2

10.4 The Agency shall not be obliged, when exercising the right referred to in clause 10.3 to identify the Council or anybody who has contributed to the Project unless the Agency publish work belonging to the Council or a material part thereof without amendment in which case due credit shall be given

10.5 The Agency's decision as to what constitutes Best Practice shall be final. The Agency shall have the right to amend the Project Related know-how or to combine information and know-how from two or more ProjectKind regards

STEPHEN WOODALL

For and on behalf of

FORSHAWS SOLICITORS LLP

(e-mail:stephen.woodall@forshaws.co.uk)t thinks fit to when compiling and publishing what it regards as Best Practice in exercise of the right referred to in clause 10.2. Where the Agency have amended the Project Related to know-how or combined information know-how from two or more Projects it shall not identify the Council as a contributor without the Council prior written consent.

10.6 The Council warrants the Agency that neither the Project Intellectual Property Rights nor any publication by the Agency of the Project Related Know-How will infringe, in whole or in part, any Intellectual Property Right of any other person and agrees to indemnity and hold the Agency harmless against any and all claims, demands and proceedings arising directly or indirectly out of the Agency's publication or use of the Project where this gives rise to or is alleged to give rise to an infringement of third party Intellectual Property Rights

10.7 The warranties and indemnities contained in clause 10.6 shall survive the termination or expiry of this Agreement

11. **Error! Bookmark not defined.REPUTATION OF THE AGENCY**

11.1 The Council shall not, and shall use all its reasonable endeavours to procure that its suppliers and contractors shall not, knowingly do or omit to do, anything in relation to this Agreement, the Project or in the course of their other activities, that may bring the standing of the Agency into disrepute or attract adverse publicity for the Agency.

11.2 The Council shall at all times perform its obligations in relation to the Project and any agreement entered into in relation to the Project with due regard to the need for those in a public service environment to observe the highest standards of efficiency“ economy, probity, courtesy, consideration and hygiene.

12. **ASSIGNMENT AND SUBCONTRACTING**

12.1 The Council shall not, without the prior written consent of the Agency (in its absolute discretion), assign, transfer, charge or deal in any other manner with this Agreement or its rights under it or part of it, or purport to do any of the same, or sub-contract any or all of its obligations under this Agreement. Any such consent if given, may be made subject to any conditions which the Agency considers necessary. The Agency may withdraw its consent to any sub-contracting where it has reasonable grounds to no longer approve the sub-contract or the sub-contracting arrangement and where these“ grounds have been presented in writing to the Council.

13. **STATUS OF COUNCIL**

13.1 In carrying out its obligations under this Agreement the Council agrees that it will be acting for its own account as principal and not as the agent of the Agency

13.2 The Council shall not say or do anything which may pledge the credit of or otherwise bind Agency or that may lead any other person to believe that the Council is acting as the agent of Agency

14. NOTICES

14.1 Any written notice

STEPHEN WOODALL

For and on behalf of

FORSHAW'S SOLICITORS LLP

(e-mail: stephen.woodall@forshaws.co.uk) required to be served under notice

STEPHEN WOODALL

For and on behalf of

FORSHAW'S SOLICITORS LLP

(e-mail: stephen.woodall@forshaws.co.uk) notice shall be served, as regards notice to be served upon the, as regards notice to be served upon the Agency, by a personal delivery or by sending it by recorded postal delivery to 110 Buckingham Palace Road London SW1W 9SB with a copy delivered or sent as aforesaid to Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7HQ, or such other address as from time to time be notified in writing by the Agency to the Council, and in the case of notice to be served upon the Council by delivering or sending it to the respective addresses specified in this Agreement or such other addresses as shall from time to time be notified in writing by the Council (as the case may be) to the Agency in the same manner: any such written notice shall (where sent by post) be deemed to have been served and received on the second business day following the day of posting and where delivered personally be deemed to have been given when received

14.2 If the Council shall comprise more than one person the service of any notice demand request or other communication o" any one of such persons shall constitute good service o" all of them

15. VALUE ADDED TAX

15.1 The payment of the funding by the Agency under this Agreement is believed to be outside the scope of Value Added Tax but if any Value Added Tax shall become chargeable all payments of funding shall be deemed to be inclusive of all Value Added Tax and the Agency shall not be obliged to pay any Value Added Tax over and above the funding.

15.2 All sums or other consideration payable to or provided by the Council to the Agency at any time shall be deemed to be exclusive of all Value Added Tax payable and where any such sums become payable or due or other consideration is provided the Council shall at the same time or as the case may be on demand by the Agency in addition to such sums or other consideration pay to the Agency all the Value Add"d Tax so payable upon the receipt of a valid Value Ad"ed Tax invoice.

16. JURISDICTION

16.1 This Agreement shall be governed by and construed in accordance with the Law of England and "he parties submit to the exclusive jurisdiction of the"English Courts

17. MISCELLANEOUS

17.1 Nothing in this Agreement shall constitute a partnership or joint venture between the parties hereto for any purpose whatsoever

17.2 A certificate by the Agency as to any sum payable hereunder by the Council shall be conclusive save in the case of manifest error

- 17.3 Without prejudice to clause 4.6 this Agreement may only be amended by a Deed duly executed by both the Agency and the Council
- 17.4 If at any time any of the provisions of this Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement shall be in any way affected or impaired as a result
- 17.5 Where any amount is due to be paid by the Council to the Agency under this Agreement, the Council shall pay interest thereon at the rate of 2% p.a. above the Base Interest Rate compounded with rests on the usual quarter days for the period between the date on which the relevant amount should have been paid and the date on which it is paid (as well after as before judgment)
- 17.6 No failure or delay on the part of the Agency in exercising any right or power and no course of dealing between the parties hereto shall operate as a waiver nor shall any single or partial exercise of any right or power of the Agency prevent any other or further exercise thereof or the exercise of any other right or power of the Agency. The rights and remedies of the Agency are cumulative and not exclusive of any rights or remedies which the Agency would otherwise have
- 17.7 Nothing contained in or done under this Agreement and no consents given by the Agency or the Council shall prejudice the Agency's or the Council's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, byelaws, instruments orders or regulations
- 17.8 Nothing in this Agreement nor any other document shall impose any obligation or liability on the Agency with respect to any actions of or

obligations or liabilities assumed or incurred by the Council or its agents, contractors or employees whether under contract, statute or otherwise

17.9 Any approval by the Agency or any person on behalf of the Agency pursuant to this Agreement of any matter submitted by the Council for approval shall not be deemed to be an acceptance by the Agency of the correctness or suitability of the contents of the subject of the approval or consent

17.10 The Agency shall not be liable to the Council for any advice given by a representative of the Agency. In addition, the Agency gives no assurance as to the suitability or viability of the Project and no endorsement of the same

17.11 Nothing in this Agreement shall confer any rights or obligations on any person who has not executed this Agreement nor shall the consent of any person who has not so executed this Agreement be needed to make any modification, amendment, variation or release of the terms hereof. The parties to this Agreement expressly agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that they do not intend any person other than a party to this Agreement to be able to enforce any term of this Agreement

18. DETERMINATION OF DISPUTES

Where any form of dispute arises between the parties to this Agreement then in the first instance such dispute shall be determined between the Agency and the Council by referral in the first instance to the decision of the Regional Director, North West/Midlands of the Agency and the Corporate Director of Regeneration of the Council and if the dispute is not resolved within fifteen Working Days of its referral to those officers the dispute shall be determined by an independent Chartered Surveyor acting as an expert agreed upon by the parties or in the absence of agreement within ten Working Days of any proposals to be appointed following the application of any party by the

President (or other appropriate officer) of the Royal Institution of Chartered Surveyors. Such independent Chartered Surveyor shall (without prejudice to his right to reach his decisions solely on the basis of his own expertise) afford to the parties a reasonable opportunity to make representations and the cost of such expert shall be paid as he shall determine. The decision of the independent Chartered Surveyor shall (in the absence of manifest error or error at law) be binding upon the parties to that dispute)

IN WITNESS of which this Agreement has been executed by the parties as a Deed and is intended to be and is delivered on the date first above written

SCHEDULE 1
Funding Commitment Table

Financial year period 2005/2006	£1.5 Million
Financial year period 2006/2007	£1.5 Million
Financial year period 2007/2008	£1.5 Million
TOTAL	£4.5 Million

SCHEDULE 2

Part I

Termination Provisions

- 1.1 The provisions of Part I of this schedule shall apply in any of the following circumstances:
 - 1.1.1 the termination of this Agreement in accordance with clause 8.2;
 - 1.1.2 in the event that the Development Agreement is terminated due to the default of the Developer
 - 1.1.3 in any other circumstances where this Agreement is terminated and the Council retains the Site or part of it which was in part or in whole acquired with funding provided by this Agreement
- 1.2 If the provisions of Part I of this Schedule do apply the Council will as soon as reasonably possible (and in any event within six months of these provisions applying) provide the Agency with its detailed written proposals for the future management development and disposal of the Council Site (“the Councils Proposals”)
- 1.3 The Agency will as soon as reasonably possible (and in any event within three months of receipt of the Council’s Proposals) consider and notify the Council whether they are (in its sole discretion) acceptable to the Agency
- 1.4 In the event that the Agency does not find the Council’s Proposals acceptable it will provide the Council with its own detailed written proposals for the future management development and disposal of the Council Site (“the Agency’s Counter Proposals”) as soon as possible and in any event within six months of receipt of the Council’s Proposals

- 1.5 The Council will as soon as reasonably possible (and in any event within three months of receipt of the Agency's Counter Proposals) consider and notify the Agency if (acting reasonably) they are acceptable to the Council
- 1.6 In the event that the parties reach agreement in relation to either the Council's Proposals, the Agency's Counter Proposals or some other arrangements herein called ("the Revised Scheme") each party shall do all that is reasonably necessary for the purposes of implementing the Revised Scheme as soon as reasonably practicable
- 1.7 In the event that the parties have not reached agreement in relation to the Revised Scheme within nine months of receipt by the Agency of the Councils Proposals the Council will appoint the disposal surveyor ("**the Disposal Surveyor**") in order to dispose of that part of the Site acquired by the Council in part or in whole with the funding provided by this Agreement
- 1.8 The Disposal Surveyor shall deal with the disposals on such basis as the Agency shall reasonably require but in any event on the following terms:
 - 1.8.1 to market and dispose of the properties in such lots and on such terms as the Disposal Surveyor believes will achieve the best sale price reasonably obtainable so as to discharge the Council's obligations pursuant to Section 123 of the Local Government Act 1972;
 - 1.8.2 to complete the disposals as quickly as is reasonably practicable in the circumstances;
 - 1.8.3 in any event not to dispose of any property for less than Market Value without the consent of the Agency

- 1.9 The proceeds of disposal are to be treated as Proceeds
- 1.10 For the avoidance of doubt the reasonable costs of management insurance and site security together with the Disposal Surveyor's costs shall be deductible from the monies payable in accordance with the preceding clause unless the disposals are necessary because an Event of Default has occurred which has led to the termination of this Agreement in which case the Council shall be responsible for the said costs

Part II

Proceeds

1. Payments of Part of the Proceeds to the Agency

- 1.1 For the purposes of this Agreement the Council accepts primary responsibility on behalf of both parties for accepting payment of all Proceeds, their safe custody and ultimately their distribution in each case strictly in accordance with the terms of this Agreement;
- 1.2 The parties agree that it will not be necessary for a specific account to be opened by the Council in relation to Proceeds but the Council will ensure that they are treated entirely separately from other funds belonging to the Council;
- 1.3 The Council will ensure that Proceeds received shall attract a commercial acceptable rate of interest commensurate with the nature of the deposit and withdrawal cycles anticipated by this Agreement;
- 1.4 The Council will maintain accounts (prepared in accordance with accountancy standards to which the Council is from time to time required to adhere to) and will on a six monthly basis (beginning six months after the first Proceeds are received) supply ("**Accounting Point**") the Agency with copies of such account details together with the treatment of items contained in such account and will deal with any reasonable queries raised by the Agency in respect of the same

and/or provide any supporting information or documents reasonably requested by it. In addition the Council will procure that the accounts so supplied are certified annually commencing one year from the receipt of the first Proceeds by the Council's Director of Finance as comprising an accurate statement of the matters referred to in this paragraph (as such matters have prior to such certification being audited by the auditors of the Council (who may be internal auditors) within the general accounts of the Council);

1.5 The Council will treat any interest generated on the Proceeds as further Proceeds;

1.6 Subject to paragraph 1.11 of this Schedule the Council will ensure that the Proceeds shall from time to time be applied strictly in accordance with this Schedule and in the following order of priority:

1.6.1 to discharge the Site Assembly Shortfall;

1.6.2 (provided that the Council shall have complied with its obligation in clause 6.27) the payment to the Council and the Agency of the sum of £400,000.00 in equal shares;

1.6.3 the balance remaining will belong to the Agency outright.

1.7 At each Accounting Point the Council and the Agency shall discuss and if reasonable to do so agree to make payments in accordance with sub paragraphs 1.6.2 and 1.6.3 notwithstanding that Site Assembly has not been completed.

1.8 The Council and the Agency will on the date calculated as three years from the date of Confirmation (or such earlier date agreed between the parties) discuss and agree (both parties acting reasonably) a payment to fairly and reasonably reflect the Site Assembly Shortfall ("Final Site Assembly Payment") on the

understanding that the balance of Proceeds after discharging this payment to the Council shall be paid out between the parties in accordance with the order of priority in sub-paragraphs 1.6.2 and 1.6.3 and that if subsequently it transpires that the final Site Assembly Payment is insufficient to cover the actual costs of actual Site Assembly the Council shall be so responsible for that shortfall.

1.9 In the event that either the Council or the Agency cannot agree (both parties acting reasonably) whether or to what extent a payment or payments should be made in accordance with this Schedule the matter may be referred for expert determination by either party in accordance with the terms of clause 18.

1.10 The payments to be made in accordance with this Schedule (if any) shall be made within ten Working Days of agreement or determination of the relevant amount.

1.11 Proceeds arising as a result of the provisions of either clause 6.2.2.4 or Part II or Schedule 2 shall be distributed as soon as they are received by the Council in the following order of priority:

1.11.1 (provided that the Council shall have complied with its obligation in clause 6.27) the payment to the Council and the Agency of the sum of £400,000.00 in equal shares;

1.11.2 the balance remaining will belong to the Agency outright

2. **Restrictions on Disposal**

2.1 The Council shall not without the prior written consent of the Agency dispose of the whole or any part of the Site except strictly in accordance with the terms of this Agreement (but for the avoidance of doubt disposals in accordance with the Development Agreement will not be a breach of this Agreement)

3. Variation of the Development Agreement

- 3.1 The Council shall not without the prior written consent of the Agency (not to be unreasonably withheld or delayed) vary or amend any of the terms of the Development Agreement

SCHEDULE 3
Agency Requirements

1. The incorporation of the Agency's Quality and Price Standards as amended by the Agency from time to time.
2. The use of a building agreement and licence for development and disposal of the Site to which both the Agency and the Council shall be party.
3. The form of the building agreement and licence shall include (inter alia) provision for:
 - 3.1 incorporation of the Agency's Quality and Price Standards as amended by the Agency from time to time;
 - 3.2 the imposition of an overage scheme in addition to the requirement for the payment of a licence fee when the building agreement and licence becomes unconditional;
 - 3.3 a conditional building agreement and licence subject to:
 - 3.3.1 the developer submitting and obtaining a planning permission which will be satisfactory for the Development; and
 - 3.3.2 the publishing of notice of confirmation of the CPO (after the relevant challenge period has expired or where a challenge is made it has been satisfactorily dealt with)
 - 3.4 an ability for the Council and the Agency to have the joint ability to determine the building agreement and licence if Stage 2 Approval cannot be achieved

- 3.5 an obligation on the developer to submit an application for a planning permission which will be satisfactory for the Development within three months of completion of the conditional building agreement and licence
- 3.6 a longstop date before which the developer will not be entitled to determine the building agreement and licence (including a proviso to allow that period to be extended in the event that a challenge to the CPO is made prior to the expiry of the longstop date which has not been resolved when the longstop date is reached).
4. The selection process and the form of the building agreement and licence shall (as far as reasonably possible) ensure that the following sequence of events are followed:
 - 4.1 Stage 1 Appraisal to be undertaken and completed;
 - 4.2 Stage 1 Approval to be given;
 - 4.3 The selection process shall commence (including if reasonably necessary OJEU procurement);
 - 4.4 The conditional building agreement and licence shall be entered into;
 - 4.5 Developer to submit detailed planning application (with the approval of the Council and the Agency);
 - 4.6 Formal land referencing to be commenced;
 - 4.7 Council to consider making the CPO;

- 4.8 Council to make the CPO (before the planning application is determined if the consultation responses are positive);
- 4.9 Notice of making the CPO served and published by the Council;
- 4.10 Satisfactory planning permission is granted;
- 4.11 Stage 2 Appraisal to be undertaken and completed;
- 4.12 Stage 2 Approval is to be given;
- 4.13 Inquiry to be held;
- 4.14 Secretary of State confirms CPO;
- 4.15 Council publishes notice of confirmation ;
- 4.16 The building agreement and licence becomes unconditional at the point where notice of Confirmation is published (or if the developer prefers at the end of the relevant challenge period after the Notice has been published or if the publication is challenged at the end of the challenge process if the CPO remains in place;
- 4.17 Council to vest the Site under the GVD (possibly in phases);
- 4.18 The developer is granted licence to go on the Site as soon as the Site Assembly is completed and vacant possession can be given.

EXECUTED (but not delivered until the)
Date hereof) **AS A DEED** by affixing)
THE COMMON SEAL of the **URBAN**)
REGENERATION AGENCY (known)
as **ENGLISH PARTNERSHIPS**) in the)
presence of

Authorised Signatory

THE COMMON SEAL of)
LANCASTER CITY COUNCIL)
was hereunto affixed in the)
presence of)

Corporate Director

ANNEXURE 1
Certificate of Title

ANNEXURE 2

Monitoring and Evaluation Plan

Monitoring & Evaluation Plan

Morecambe, West End - Housing Exemplar

Contacts

English Partnerships (“The Agency”) - Neil Clarke, Senior Regeneration Manager, Warrington

Lancaster City Council (“The Council”) - Steve Matthews, Project Director, West End

Part 1 Monitoring Plan

Purpose

The Plan details the agreed outputs and expenditure in relation to the Housing Exemplar project as per the Funding Agreement between the Council and the Agency of which it forms part. The funding agreement identifies how the parties will work together to deliver the project and sets out how the Project will be monitored, how the monitoring data will be collected, and how the aims and objectives will be assessed against expected outputs and outcomes. Lancaster City Council is to be responsible for ensuring that accurate and up to date information is supplied when requested by the Agency. The Agency will assess the information provided by the Council and evaluate the project. Monitoring of the project by the Agency will also be carried via site visits and by assessment of financial claims made by the Council.

1 Frequency of Reporting

The Council is expected to submit details of outputs achieved and a narrative progress report, as detailed below, on a quarterly basis for the duration of the project

Quarter 1 : April – June to be submitted by 31 July

Quarter 2 : July – September to be submitted by 31 October

Quarter 3 : October to December to be submitted by 31 January

Quarter 4: January – March to be submitted by 30 April

By mutual consent, the parties may also agree interim claims which will also be covered by this Monitoring & Evaluation Plan.

No claims for payment of defrayed expenditure will be accepted if this information is not provided. The quarter 4 return will also provide an audit statement, as detailed on the claim form.

2. Form of Monitoring Report

Each report will include the following:-

A narrative report detailing overall progress towards the achievement of the project delivery milestones and target outputs

3. Narrative Reports

Each narrative report should be provided using the following standard headings:-

- 3.1 Progress during quarter (major achievements/problems)
- 3.2 Achievement of milestones as agreed
- 3.3 Key issues for next quarter (including catching up on any slippages)
- 3.4 Progress towards achievement of targeted outputs and outcomes

4. Project Milestones Agreed

- 4.1 Memorandum of Understanding signed by the Agency, the Council, NWDA, Housing Corporation & Adactus - December 200
- 4.2 Stage 1 Appraisal complete xxx
- 4.3 Production of Development Brief xxx
- 4.4 Commencement of developer Selection Process xxx
- 4.5 Land referencing complete xxx
- 4.6 Council Resolution to make CPO xxx
- 4.7 Stage 2 Appraisal complete xxx
- 4.8 CPO Inquiry xxx
- 4.9 Preferred developer selected xxx
- 4.10 Conditional Development agreement exchanged xxx
- 4.11 Development agreement becomes unconditional xxx
- 4.12 Start on site xxx
- 4.13 Practical completion xxx
- 4.14 Final report on project outputs achieved to be supplied within 3 months of practical completion
- 4.15 Report on project outcomes achieved (i.e. progress towards targets below) – due annually from the date of exchange of the funding agreement & for 5 years after project completion.

5 Output Targets Agreed

Core outputs	2005/06	2006/07	2007/08	2008/09	Later years	Total
Brownfield land reclaimed [ha]				1.222		
Housing starts on site – open market sale			50	53		103

Housing units facilitated [completions] – open market sale				50	53	103
Private sector investment attracted [£m]			5,65	5,65		11.3
Non-core outputs						
Jobs created / safeguarded [no.] (2007 – 09 are construction related)	3		3	4		10
Match funding from NWDA (£m) for investment in West End Master Plan area			1	1	1	3

Quality standards

Ecohomes very good [no. housing units]	103
Collaborative approach to design [yes / no]	Yes
Collaborative design workshops [no. events]	1

5 Outcome Targets Agreed

Area	Predicted Housing outputs of the whole Phase 1 West End Masterplan – to be considered as Outcomes for the Exemplar					
	Reduction in Private Rented Units	Remodelled Apartments	Remodelled Houses	New Build Apartments	New Build Town Houses	Total
1				65 retirement 135 open market	28	228
2/3	134	36	36			72
5	135	12	33	54	4	103
9	39					
11	72		15		12	27
15				47	35	82
TOTAL	380	48	84	301	79	512

7 Record Keeping/ verification

All expenditure and outputs reported, including leverage, will need to be supported by adequate auditable evidence. These records will be subject independent financial audit, review & verification.

The Council as accountable body will maintain financial records on an “open book” basis

The following evidence will be required to support outputs

Output / Outcome	Evidence
Brownfield Land remediation	Professional report detailing evidence of satisfactory site remediation
Housing Units provided	Housing completion records
Housing outcomes	Evidence from planning consents/ completions
Private Sector Investment attracted	Professional development appraisal

The Council will also be expected to keep adequate records to trace progress towards other outcomes detailed in Part 2 for evaluation of achievements

Part 2: EVALUATION PLAN

The evaluation will be carried out by the Agency using information supplied by the Council, to establish what actually has been achieved against the base line position.

The scope of the evaluation will include a consideration of:-

- 2.1 What has been achieved and how does this compare to the forecasts made
- 2.2 If some outputs/outcomes have not been achieved, why is this?
- 2.3 Were there any additional unforeseen benefits?
- 2.4 Did the project run to programme/cost?
- 2.5 How cost effective was it?
- 2.6 How sustainable are the achievements/benefits provided?
- 2.7 What lessons can be learnt for future projects?

(Ends)

ANNEXURE 3

Plan

ANNEXURE 4

Claim Form and Monitoring Report

Send to **Finance Team**
English

Partnerships
Arpley House
110 Birchwood Boulevard

Warrington

Birchwood

Cheshire WA3 7QH

Claim **Interim Claim** **Final**

CLAIM FORM AND MONITORING REPORT

Project Name	Morecambe Housing Exemplar Scheme
Project Scheme Number	19467
EP Champion	Neil Clarke

Name of partner /partnership / developer:

Person to whom queries about this claim can be made:

Name Tel (inc STD)

Position Email

Address

Details of bank branch to which payments should be made Please tick if details have changed

Name of bank	Account Name
Address	Bank Account Number
	Sort Code

-----**EP Use Only - Claim Payment Summary**-----

Gross Expenditure (N)		Code to Project Expenditure	
Income (Q)		Code to Project Receipts	

Net Payment (R)			
-------------------	--	--	--

BALANCE OF APPROVAL		Date	
---------------------	--	------	--

Is this a final claim?

Yes

No

Claim for expenditure incurred/defrayed between. NB. This should be the first and last date of the claim period in question e.g. 01/11/05 – 30/11/05

D D M M Y Y

D D M M Y Y

and

Date of Offer Letter or Contract

	Capital £	Revenue £	Total (Cap + Rev) £
(a) – Balance of approved funding			
(b) - Cumulative actual expenditure (i.e. payments made) against grant is being claimed <i>(not to exceed a)</i>			
(c) - Grant received to date			
(d) - Grant now claimed = $(b - c)$			

Attached

Evidence of expenditure (if stipulated in contract)

Photographs (optional)

Other (please specify):

Clause 4.2 of Funding Agreement dated day of 2005
Valuation confirming purchase price does not exceed open market value

Certificate of Title

Undertaking regarding restriction

Certificate of Chief Financial Officer (or equivalent) of partner / accountable body

I apply for payment towards the expenditure detailed above and on page 3.
I certify that to the best of my knowledge and belief:

- 1) The information in this form is true and correct.
- 2) We have not received and will not receive any specific grants, other support or contributions towards the expenditure for which payment is now being sought.
- 3) The grant claimed is in respect of items eligible for, and approved for, EP funding.
- 4) The claim is made in accordance with the offer letter / contract stated above.

Signature

--

Position

--

Name (Block Capitals)

--

Date

--

Supplementary Information

Date of latest approval letter			
A. Balance of approved cost of Project			
Approved Cumulative Expenditure and Income at Rate of Investment <i>Include all expenditure incurred and income received so far against this phase of the project..</i>			
Expenditure	<i>Expenditure/ income to date £</i>	<i>Expenditure/ income in previous claims £</i>	<i>Expenditure/ income now claimed £</i>
B. The Acquisition Costs			
C. Valuation Fees			
D. Legal Fees			
E. Cost of Stage 1 & 2 Appraisal			
F. CPO Costs			
G. Management Costs			
H. Other; Specify:			
I. Total expenditure (B+C+D+E+F+G+H+I)			
Miscellaneous Income			
J. Credits (e.g. contributions) Specify:			
K. Other financial support (e.g. ERDF) Specify:			
L. Total income (K+L)			
M. Total net expenditure to date (J-M)			
N. Total Miscellaneous Income £			
Income			
O. Income from sales of properties previously funded by the Agency			
P. Interest			
Q. Total Income £			
R. Net Payment (O-Q)			

Supplementary Information

Project Start Date: D D M M Y Y

Forecast/Actual Project Completion Date:

Forecast of future English Partnerships claims

Date of claim	Capital	Revenue	Total
a. Previous Years			
b. Current Year to Date 2005/06			
			(2005/06))
April			
May			
June			
July			
August			
September			
October			
November			
December			
January			
February			
March			
c. 2005/06 Total			
			(2006/07)
April			
May			
June			
July			
August			
September			
October			
November			
December			
January			
February			
March			
d. (2006/07) Total =			
e. (2007/08) Total =			
f. (2008/09) Total=			
g. Total Forecast (a+b+c+d+e+f) =			

Supplementary Information (continued)

Outputs

		Total to date -1-	In period covered by this claim -2-	Forecast for year -3-
Jobs created <i>1A(i)</i>				
Jobs Safeguarded <i>1A(ii)</i>				
Square meters of new of refurbished Industrial or commercial floorspace				
Houses Units - Starts on site	Affordable			
	Private			
	Refurbishment			
Houses Units - Completed	Affordable			
	Private			
	Refurbishment			
Ha of brownfield land remediated or recycled				
a) Derelict land and buildings				
b) Other previously developed land & buildings				
Other Public Investment (£) Source:				
Other Private Investment (£) Source:				

Definitions

Jobs created or safeguarded

- FTE job created (i.e. 30 hours/week or more) with a life expectancy of at least 12 months.
- A safeguarded job is that which is expected to be lost within 12 months without the project. (Temporary and Construction jobs are excluded in all cases. Seasonal jobs should be excluded unless agreed separately).

Housing Unit Facilitated (Starts on Site) – Categorised as (i) Affordable including Key Worker and (ii) Other

- Start on site is deemed to be the date of signing the Building Agreement or the date of the Freehold sale (where not by Building Agreement).
- One decrete housing unit (e.g. house, flat) comprises one housing unit, regardless of size. For communal accommodation (e.g. hostel, nursing home, student housing) two bed spaces comprise one housing unit.
- Affordable housing incompases low-cost market and subsidised housing (irresepective of tenure ownership – whether exclusive of shared or financial arrangements) that will be available to people who cannot afford to rent or buy houses generally available on the open market.

Housing Units Completed - Categorised as (i) Affordable including Key Worker and (ii) Other

- In addition to the guidance above, forecast/claimed on the basis of anticipated/actual physical completion of the individual unit or in the case of communal accommodation of physical completion of the block i.e. the property must be habitable.
- Please ensure the aggregate of housing completions equals the total of any recorded starts on site.

Square Metres of New or Refurbished Industrial or Commercial Floorspace

- Sq metres of new business/commercial floorspace
- Sq metres of improved business/commercial floorspace (where actual or potential market value has been increased by some physical improvement)
- Sports centres/clubs or visitor attractions not to be included.

Ha of brownfield land remediated or recycled/ amount of derelict land reclaimed

- Must be remediated to an acceptable 'fit for use' condition
- Derelict land to be shown separately
- Brownfield land excludes:
 - **land in use for agricultural or forestry purposes**
 - previously undeveloped land (eg parks)

Monitoring Report

Project Name:

Project Number:

Claim for Period Ending:

If submitting an interim claim answer A; if submitting a final claim answer B.

A. Progress during month (narrative to include any major achievements/problems or variations to terms of contract)

B. Brief details of major achievements (please provide final photographs, if appropriate)

Question to be answered with interim claims only.

Key plans for next month (including details of any catching up required)

Signed.....

Position.....

Date.....

EP Comments (if any)

Instructions for Submission of Claims & Monitoring Report

1. Claims should be submitted in accordance with the terms set out in your contract with the Agency, and at the frequency stated therein.
2. Claims should be submitted using the Agency's Claim Form.
3. Completion of Claim Form
 - The first page asks for details of the project or scheme, contact details for the claimant, and details of the bank account into which payment should be made. Please tick the checkbox to draw attention to any change in bank account details.
 - The second page asks for details of the claim. Please check the box to indicate whether or not it is a final claim for the project or scheme in question.
 - Complete the boxes to indicate the period of time to which the claim relates, and the date of the relevant contract or offer letter.
 - In row (a) of the table below, indicate the total amount of approved expenditure for the project or scheme, split into capital and revenue expenditure.
 - In row (b) indicate the expenditure to date.
 - In row (c) indicate EP payments to date in respect of the project or scheme in question.
 - In row (d) indicate the grant now being claimed. In most cases this should be a – b – c.
 - The claimant's Chief Financial Officer (or equivalent) should sign to certify the claim.
 - Complete the Supplementary Information section of the form and Monitoring Report.
 - Provision of the information requested in the Supplementary Information section of the claim form does not supersede any existing reporting requirements
 - The original Claim Form should be sent to the EP's Finance Team at the Warrington Headquarters, with a copy being sent to the Project Champion (your main EP contact) unless he/she has indicated otherwise.

Audit Certificate (For Final Claim Only)

Project
Name

Project
No.

I/We have examined the entries in this form and the related accounts and records of the authority and have carried out the tests as I/we consider necessary and I/we have obtained such explanations as I/we consider necessary. (Subject to the observations in the report dated)* I am/we are of the opinion that the entries are fairly stated and that the expenditure has been properly incurred in accordance with the funding agreement dated 05/10/05.

Signature

Date

Print Name

DRAFT 6 – 29/11/05 (Trackee)

ANNEXURE 5
Auditor's Report

DRAFT 6 – 29/11/05 (Tracked)

The Auditors Report

[Headed paper of the Applicant's auditors]

[Address the letter to: The Urban Regeneration Agency]

Date

Dear Sir

[Full Project Name ("the Project") and Clients Name ("the Applicant")]

We refer to the agreement dated _____ 200 made between (1) The Urban Regeneration Agency (2) the Applicant (**the "Agreement"**).

We have examined the enclosed Grant claims covering the period from [DATES] made under this Agreement.

We have examined the records and accounts of the Applicant and have carried out such checks and obtained such explanations, as we consider necessary.

Subject to the observations in the attached report dated [DATE], we report that in our opinion:

1. The claims for payment are in accordance with the Agreement;
2. The Applicant has defrayed the reported expenditure {"defrayed" means discharged by payment or otherwise); and
3. Adequate records have been available to use to enable us to report on all claims made for payment of grant under the Agreement
4. The Applicant has not been offered claimed or received any other public sector grant, contribution or guarantee in respect of the Project [the Applicant has [been offered/claimed/received] the amounts details of which are attached to this certificate] [please list respective amounts, payees and dates].

Signed

On behalf of [AUDITORS]

Contact name and details for enquiries: []

[Note: the auditor signing this report must be the Applicant's auditors who must be duly appointed as such and qualified to act as such under the Companies Act 1985]

DRAFT 6 - 29/11/05 (Tracked)

ANNEXURE 6

EP's Quality and Price Standards

DRAFT 6 – 29/11/05 (Tracked)

DRAFT 6 – 29/11/05 (Tracked)