

HEADS OF TERMS

REDEVELOPMENT AND TRANSFER OF PROPERTIES AT CHATSWORTH GARDENS, MORECAMBE

1 PARTIES

- 1.1 **PLACE FIRST LIMITED** incorporated and registered in England and Wales with company number 07071980 whose registered office is at Unit 5 & 6 The Stables Parrwoods Lane, Didsbury, Manchester, M20 5PG ('the Developer')
- 1.2 **LANCASTER CITY COUNCIL** of Town Hall Dalton Square Lancaster LA1 1PJ ('the Council')

2 PRELIMINARY

- 2.1 These heads of agreement are made between the parties whose names are set out in part 1 above.
- 2.2 This is not a legally enforceable agreement and is intended only to set out the points on which the parties will seek to conclude a legally binding agreement.
- 2.3 No party makes any warranty, undertaking or similar commitment in relation to any matter of fact or opinion set out in this document and no party shall make any claim based on any such warranty or undertaking.
- 2.4 These heads of agreement are subject to contract and formal ratification by the Council and Developer's respective formal procedures.
- 2.5 The conclusion of the agreement will be subject to satisfactory responses to enquiries and searches by the respective parties' legal representatives.
- 2.6 The conclusion of the agreement will be in accordance with a contract prepared and agreed between the respective parties legal representatives, and shall be subject to such other or amended terms they consider appropriate to a transaction this nature

3 THE OVERVIEW

- 3.1 The Council is the owner of certain properties at Chatsworth Gardens Morecambe ('the Properties') which have been acquired by the Council through grant funding from the Homes and Communities Agency ('the HCA').
- 3.2 The Council wishes to redevelop the Properties and other properties in the vicinity of the Properties and had invited tenders for the required works.
- 3.3 The Developer submitted a tender to the Council which was acceptable to the Council.
- 3.4 The tender submitted by the Developer included an initial specification and proposal for the redevelopment works for the Properties.

4 THE PROPOSED ARRANGEMENT

- 4.1 The intention of the parties is that the redevelopment is carried out in two distinct phases.

- 4.2 Phase 1 ('Phase 1') would be the redevelopment ('the Phase 1 Works') of 46 residential units at land bound by Westminster Road, Albert Road, Chatsworth Road and Regent Road.
- 4.3 Phase 2 ('Phase 2') would be the redevelopment ('the Phase 2 Works') of 46 residential units at land bound by Chatsworth Road, Albert Road, Balmoral Road and Regent Road.
- 4.4 The Developer would intend to fund the redevelopment over the two phases.
- 4.5 The Developer confirms that it has funding available to it for the Phase 1 Works, provided that the Council is able to provide the Developer with a grant of £1.9M ('the Grant').
- 4.6 The Developers funding for the Phase 1 Works will be from the HCA and its own investment.
- 4.7 On completion of the Phase 1 Works the Properties contained in Phase 1 will be transferred to the Developer for nil consideration.
- 4.8 The Phase 2 Works will be funded from the proposed re-finance or sale of Phase 1 following completion of the Phase 1 Works together with further funding from the HCA, the reinvestment of the Grant and the Developers equity.
- 4.9 Following the completion of the Phase 2 Works the properties contained in Phase 2 will be transferred to the Developer for nil consideration.
- 4.10 Following the completion of each of the Phase 1 Works and the Phase 2 Works the Properties will be managed by a professional landlord group that will be appointed by the Developer.
- 4.11 The arrangements between the parties will be regulated by a series of agreements. These will be;
- 4.11.1 A Development Agreement;
- 4.11.2 Building Licence Agreements; and
- 4.11.3 A Grant Agreement
- 4.12 For the purpose of the agreement to carry out the redevelopment works at the Properties the Developer will create specific wholly owned special purpose vehicles ('SPV'). There will be a specific SPV for each of Phase 1 and Phase 2. Each SPV will be a party to the agreements set out in paragraph 4.11.

5 THE DEVELOPMENT AGREEMENT

- 5.1 The development agreement ('the DA') will be the principal agreement that regulates the arrangements between the parties for the redevelopment of the Properties. Reference to the Developer in this section is to be treated as being a reference to the relevant SPV.
- 5.2 The DA will be a conditional agreement.
- 5.3 There will need to be satisfied a number of conditions precedent before the works of redevelopment can take place. The satisfaction of the first series of conditions precedent will lead to the granting of a building licence agreement ('BLA') to the Developer with respect to the Phase 1 Works.

5.4 There will be further conditions precedent which would need to be satisfied before a further BLA can be granted to the Developer for the Phase 2 Works..

5.5 Phase 1 Conditions Precedent

The conditions precedent for the commencement of the Phase 1 Works are as follows;

5.5.1 The Developer is to provide evidence of funding for the redevelopment works (with the exception of the grant funding);

5.5.2 Provision of grant funding by the Council;

5.5.3 The Developer obtaining funding (and being able to comply with any conditions necessary for that funding) satisfactory in all respects to the Developer to allow it to proceed with the Phase 1 Works;

5.5.4 Agreement as to the plan for the Phase 1 Works;

5.5.5 The provision of good title by the Council for the Properties in Phase 1;

5.5.6 Vacant possession being available;

5.5.7 The Developer obtaining where applicable planning permission satisfactory to the Developer for the Phase 1 Works;

5.5.8 The Developer obtaining where appropriate traffic orders, stopping up orders or footpath closure orders relating to the Phase 1 Works;

5.5.9 The Developer obtaining all relevant agreements for service media diversion, disconnection or similar;

5.5.10 The Developer obtaining estimates for the cost of any remediation works satisfactory to it to allow it to proceed with the Phase 1 Works;

5.5.11 Agreement being reached between parties as to the method for dealing with other properties in Phase 1 not owned by the Council;

5.5.12 Agreement being reached between parties as to public realm treatment outside curtilage of Properties;

5.5.13 Both parties to agree a strategy for community consultation;

5.5.14 Agreement being reached between parties as to timescales for completion of the works;

5.5.15 The Council obtaining the consent of the HCA of entering into the agreement for redevelopment of the phases with the Developer on such terms that are acceptable to both the Council and the Developer.

5.6 Phase 2 Conditions Precedent

The conditions precedent for commencement of the Phase 2 Works are as follows;

5.6.1 The completion of the Phase 1 Works;

5.6.2 Satisfaction of conditions precedent in identical form to those contained in paragraph 5.5

5.6.3 Successful refinancing or sale of Phase 1 properties.

- 5.7 The DA will include provisions to deal with the determination of each of the conditions precedent.
- 5.8 The DA will provide a mechanism to deal with the parties obligations regarding the satisfaction of the conditions precedent including the provision of mutual assistance as appropriate.
- 5.9 The DA will include provisions as to the time periods in which the conditions precedent are to be satisfied. Failure to satisfy the conditions precedent by the agreed time periods will lead to the determination of the DA by either party.
- 5.10 Satisfaction of the conditions precedent will lead to the granting of a BLA in a prescribed form subject to alterations as may be required and agreed between the parties.
- 5.11 Pending the satisfaction of the conditions precedent the Developer will be allowed access to the Properties for the purpose of surveying and assessment for the provision of the redevelopment works.
- 5.12 The DA will include provisions to deal with termination as a consequence of default by either of the parties.
- 5.13 The DA will include a dispute resolution mechanism.
- 5.14 VAT will be addressed
- 5.15 The DA will include provisions to address Freedom of Information obligations, Diversity, Confidentiality and publicity, Human Rights, Ombudsman Investigations, Bribery and other similar statutory requirements.
- 5.16 The DA will deal with the future use of the Properties following the completion of each of the Phase 1 Works and Phase 2 Works. These will include the provision for the management and disposal of the Properties.
- 5.17 The DA will deal with financial arrangements between the parties in particular the provision of the Grant by the Council for the Phase 1 Works and Phase 2 Works. These provisions will include;
- 5.17.1 any required inter-creditor agreements with senior lenders;
- 5.17.2 distribution of an agreed margin to the Developer following the completion of the Phase 1 Works;
- 5.17.3 the prospective re-finance of the Phase 1 Properties following the transfer of the Phase 1 Properties;
- 5.17.4 the treatment of the proceeds of any completed re-finance

6 THE BUILDING LICENCE AGREEMENT

- 6.1 The BLA will be the formal agreement which will be entered into between the Council and the Developer following the satisfaction of the conditions precedent for Phase 1 and thereafter Phase 2. There will be a separate BLA for each phase.
- 6.2 The BLA will be in a standard form which will allow for certain modification depending on circumstances set out in the DA.
- 6.3 The BLA will be a conditional agreement. The condition precedent is the completion of the redevelopment works in accordance with the agreed development plan within

the agreed time period. Satisfaction of the condition precedent will lead to the transfer of the relevant Properties to the Developer for nil consideration

- 6.4 The BLA will grant a licence to the Developer to enter onto the relevant Properties in order to carry out the redevelopment works.
- 6.5 The Developer will be required;
 - 6.5.1 To complete the redevelopment works in accordance with the agreed development plan within the agreed time periods subject to agreed events of delay;
 - 6.5.2 To carry out the redevelopment works in accordance with all relevant statutory requirements;
 - 6.5.3 To insure or procure that the Properties the subject of the BLA are insured for third party liability;
 - 6.5.4 To indemnify the Council as landowner against any injury, loss, or claim arising from Developers occupation and use of relevant Properties;
 - 6.5.5 Not to obstruct or deposit mud and debris on any highways adjoining the Properties;
 - 6.5.6 Not to discharge solid matter from the site into any drains watercourses or sewers on the Properties or in the adjoining streets;
 - 6.5.7 Not to deposit soil, debris, waste or other matter onto the adjoining land of the Council;
 - 6.5.8 Not to sever, obstruct, or damage any sewers, drains, pipes, wires, cables, conduits and the like belonging to Statutory Undertakers and service supply companies that exist in the Properties for the benefit of adjoining land without making proper provision for alternative supply, and to be responsible for the costs involved;
 - 6.5.9 Not to cause nuisance or annoyance to adjoining owners or occupiers;
 - 6.5.10 To be responsible for any rates or other outgoings on the Properties and indemnify the Council accordingly.
- 6.6 The BLA will contain alienation provisions to restrict assignment during its existence. The Developer will however be allowed to grant security to third parties providing finance to the Developer.
- 6.7 The BLA will contain mortgagee protection provisions for third parties who have provided finance to the Developer.
- 6.8 The BLA will contain provisions to deal with default and its consequences including termination. Any termination provisions are to include repayment to the Developer of the fair and reasonable value of works carried out to the date of termination subject to the reasonable costs of the Council.
- 6.9 The BLA will contain provisions to deal with the evidence of the Councils title to the Properties and the matters which they will be ultimately sold subject to.
- 6.10 The provisions to be contained in the transfer of the relevant Properties to the Developer will be set out in an agreed form.
- 6.11 The Council will be allowed access to inspect the works on reasonable notice to assess the redevelopment works.

6.12 The BLA will contain provisions to deal with the completion of the redevelopment works and the final sign off by the Council that the relevant conditions have been satisfied leading to the transfer of the relevant Properties.

6.13 The BLA will contain relevant provision to deal with health and safety, the Construction Design and Management (CDM) Regulations, VAT and dispute resolution.

7 THE GRANT AGREEMENT

7.1 The Council will grant the Developer £1,900,000 which will be used to subsidise eligible works within Phase 1.

7.2 The definition of eligible works is to be agreed and will be fully described in the Grant Agreement.

7.3 The Grant will be paid in stages in such manner and at such times as are to be agreed.

7.4 In principal the Council will allow a partial drawdown of the Grant subject to the initial payments being matched by the Developers contribution of funding from its own resources prior to the use of any senior funding obtained by the Developer.

7.5 The Grant shall contain provisions relating to;

7.5.1 The use of the Grant funds;

7.5.2 Any events which could lead to repayment of the whole or part of the grant, eg sales in certain circumstances; the Council acknowledge that re-financing of the Properties will not trigger repayment.

7.5.3 Provisions for consent by the Council for dealings with the Properties, to include permitted dealings without consent and dealings which require consent which consents are not to be unreasonably withheld or delayed.

7.5.4 Any conditions precedent before drawdown can commence eg the satisfaction of the conditions precedent for the commencement of the Phase 1 Works with the exception of the condition precedent relating to the Grant.

7.5.5 The means that the Grant is protected, eg a legal charge over the Properties once transferred to the Developer

7.5.6 Obligations regarding inter-creditor arrangements

7.5.7 Provisions regarding re-payment and future reinvestment

7.6 The Grant shall contain provisions relating to the use of the funding for the redevelopment of Phase 2 and beyond

8 INITIAL PROPOSED TIMESCALES

8.1 Exchange contracts Mid November 2013

8.2 Developer to submit planning application October 2013

8.3 Licence to access properties for initial survey work – November 2013

8.4 Estimated satisfaction of conditions precedent for phase 1 - December 2013

- 8.5 Longstop for contract to become unconditional – March 2014
- 8.6 Within one month of the unconditional date, the Developer will commence enabling works and complete the same within 4 months
- 8.7 Within 5 months of completing the enabling works the Developer will commence the main works and will complete the same within a minimum of 12 months
- 8.8 The Target date for completion of the main works is January 2015
- 8.9 The contractual long stop date for completion of main works June 2015
- 8.10 Long stop date for commencement on site for Phase 2 is 12 months after Practical Completion of Phase 1
- 8.11 Occupation of the premises to begin July 2015

Signed by the parties as confirmation of the above but without any present intention to create legal relations between them in relation to the matters set out above

.....
Signed Date

For and on behalf of.....

.....
Signed Date

For and on behalf of.....