



**DEVELOPMENT AGREEMENT**  
**between**  
**THE CITY OF EDINBURGH COUNCIL**

**and**



---

**Site: FORMER ROYAL HIGH SCHOOL EDINBURGH**

---



**Pinsent Masons**

Pinsent Masons LLP  
141 Bothwell Street  
Glasgow  
G2 7EQ

Tel: +44 (0)141 567 8400

Fax: +44 (0)141 567 8401

Web Site: <http://www.pinsentmasons.com>

14\_2\_14 - Development Agreement - Amended by PM.DOC



THIS AGREEMENT is made between

(1) THE CITY OF EDINBURGH COUNCIL as local authority for the City of Edinburgh under and for the purposes of the Local Government etc (Scotland) Act 1994 and having its principal office at City Chambers, High Street, Edinburgh (the "Council"); and

(2)

the "Developer")

**BACKGROUND:**

(A) the Council owns the Site;

(B) the Developer has agreed subject to the Precondition being purified to take from the Council a Lease of the Site and to carry out the Development.

**IT IS AGREED AS FOLLOWS:**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless the context otherwise requires;

"Agreement Date" means the date of the last execution of this Agreement or if earlier, the date when the terms of this Agreement become binding on the Council and the Developer;

"Approved Form" means in relation to any deed or document that it is in the form reasonably approved by or on behalf of both the Parties as signified in writing by each of the Parties or their Solicitors;

"Architects" means such reputable firm of architects as may be appointed in connection with the Development with the reasonable consent of the Council;

"Base Drawings and Specification" means the drawings reproduced in Part 1A of the Schedule and the specification reproduced in Part 1B of the Schedule as the same shall be updated and substituted in accordance with Clause 2.1;

"Buildings" means the buildings from time to time on the Site;

"Building Contract" means

"CDM Co-ordinator" means such reputable and experienced person in the role of CDM Co-ordinator as may be appointed in connection with the Development with the reasonable consent of the Council;

"CDM Regulations" means the Construction (Design and Management) Regulations 2007;



**"Certificate of Practical Completion"** means the statement of practical completion or (as the case may be) the practical completion certificate of the Development to be issued by the Contract Administrator under and in accordance with the Building Contract;

**"Collateral Warranties"** means agreements in Approved Form, and entered into by the Architects the CDM Co-ordinator, the Contractor the Contract Administrator the M&E Engineers and the Structural Engineers all in favour of the Council;

**"Commencement Date"** means the date occurring on the expiry of [REDACTED] after Completion or such other date for the commencement of the Development as is reasonably approved by the Council;

**"Completion"** has the meaning given to it in the Missives;

**"Contract Administrator"** means such reputable and experienced firm or company as the Developer may appoint to perform the services of the contract administrator under the Building Contract with the reasonable approval of the Council;

**"Contractor"** means one of those persons who are listed in Part 2 of the Schedule or such other reputable building contractor as may be appointed by the Developer as main contractor for the design (where appropriate) and execution of the Development with the reasonable consent of the Council;

**"Contractor's Team"** means the Architects, the Structural Engineers, and the M&E Engineers;

**"Contracts of Engagement"** means the contracts in respect of the appointment in relation to the Development of each member of (1) the Contractor's Team and (2) the Developer's Team, all to be in Approved Form;

**"Council's Solicitor"** means Anderson Strathern LLP, 1 Rutland Court, Edinburgh or such other solicitor in the employment of the Council as may be notified to the Developer;

**"Council's Surveyor"** means such surveyor who is employed or appointed by the Council for the purposes of this Agreement and as may be notified to the Developer or failing any such notification the Council;

**"Creditor"** means any provider of debt finance to meet or refinance the construction costs and fees of the Development (including the obtaining of the Desired Planning Permission and Necessary Consents) and the Price defined in the Missives whose interest is notified to the Council;

**"Deleterious Materials"** means any of the materials or other substances listed in Part 3 of the Schedule;

**"Desired Content"** in relation to the Development means that it will comprise not less than 120 bedrooms or such greater number as may be permitted under the Planning Permission together with publicly accessible art space, restaurant, bar and leisure space, parking (if and to the extent desired by the Developer) and other facilities;

**"Desired Planning Permission"** has the meaning given to it in the Missives;

**"Development"** means the change of use and development of the Site by the partial demolition of the Buildings, the alteration and adaption of the remaining Buildings and the

construction of new structures all in accordance with the Proposals so as to provide a high quality hotel of international standing (but for the avoidance of doubt not a budget hotel, or similar) of the Desired Content;

"Developer" includes in substitution an assignee under an assignment provided for in Clause 5;

"Developer's Solicitor" means Pinsent Masons LLP of 141 Bothwell Street, Glasgow, G2 7EQ (Ref: DAB) or such other firm of solicitors as the Developer may appoint from time to time in their place and who have been notified in writing to the Council's Solicitor;

"Developer's Team" means the CDM Co-ordinator and the Contract Administrator;

"Funder" means [REDACTED]

"Insured Risks" means fire, explosion, lightning, earthquake, storm, flood, bursting or overflowing of water tanks, apparatus or pipes, impact by aircraft (other than hostile aircraft) and articles dropped from them, impact by vehicles, riot, civil commotion and any other normal commercial risks including terrorism and any other risk for which insurance cover is effected under the Building Contract or by the Developer itself under Clause 9;

"Lease" means the Lease as defined in the Missives to be granted [REDACTED]

"M&E Engineers" means such reputable firm of mechanical and electrical engineers as may be appointed in connection with the Development with the reasonable consent of the Council;

"Missives" means the contract [REDACTED]

"Necessary Consents" has the meaning given to it in Clause 4.2.1

"Operator" means at the time the same falls to be considered a recognised owner or operator of high quality hotels of international standing with whom the Developer (or if applicable the tenant under the Lease) has entered into either an agreement for a sub-lease permitted under and in terms of the Lease, or an agreement for the operation and management of the hotel on the Site to be completed and fitted out by the carrying out of the Development

"Permitted Assignment" has the meaning given to it in Clause 5.3;

"Permitted Delay Events" means in relation to the Development, but subject to the proviso below, any of the following events or circumstances:

Force majeure, damage or destruction by an Insured Risk, insolvency of the Contractor or the Operator or any other event or circumstance which is not within the control of the Developer under the Building Contract or in respect of which the Contractor is entitled to claim and is awarded an extension of time under and in accordance with the Building



Contract; Provided Always that (a) any delay or failure in the making of payments properly due and payable under and in accordance with the Building Contract shall not itself constitute a Permitted Delay Event; and (b) the Developer shall use all reasonable endeavours to minimise the extent of any such delay;

"Plan" means the plan reproduced in Part 4 of the Schedule;

"Planning Acts" means The Planning Etc (Scotland) Act 2006, the Town and Country Planning (Scotland) Act 1997, the Local Government and Planning (Scotland) Act 1982, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997 and the Planning (Consequential Provisions) (Scotland) Act 1997 and any future legislation of a similar nature;

"Planning Authority" means City of Edinburgh Council in their capacity as local planning authority for the City of Edinburgh under and in terms of the Planning Acts;

(i) "Practical Completion" means the date of practical completion as stated by the Contract Administrator in the Certificate of Practical Completion;

"Precondition" means the suspensive condition specified in Clause 10.1;

"Proposals" means the Developer's proposals for the development of the Site and the conversion of the Buildings to provide a high quality hotel of international standing (but not, for the avoidance of doubt a budget hotel, or similar) of the Desired Content;

"Schedule" means the Schedule annexed and executed as relative to this Agreement;

"Site" means ALL and WHOLE that area of ground lying to the north of Regent Road Edinburgh as shown outlined in red on the Plan;

"Structural Engineers" means such reputable structural engineer as may be appointed in connection with the Development with the reasonable consent of the Council;

"Subsidiary" means in relation to the said Duddingston House Properties Limited a "subsidiary" as defined in section 1159 of the Companies Act 2006 in respect of which the members' rights to vote on all or substantially all matters which are decided by a vote of the members (including the right to appoint or remove a majority of its board of directors) are controlled by the said Duddingston House Properties Limited;

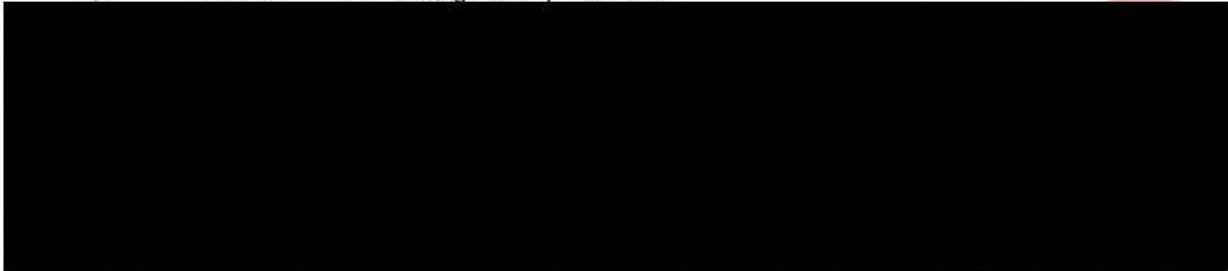
"Working Day" means any day which is not a public holiday and when the Scottish Clearing Banks and clearing banks in the City of London are open for business.

## 1.2 Interpretation

In this Agreement, unless otherwise specified or the context otherwise requires:

- 1.2.1 a reference to one gender includes all other genders;
- 1.2.2 words in the singular only include the plural and vice versa;
- 1.2.3 a reference to the whole is to be treated as including reference to any part of the whole;
- 1.2.4 a reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and words importing individuals include corporations and vice versa;



- 1.2.5 any reference to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or Part of the Schedule of or to this Agreement;
- 1.2.6 any reference to a statute or statutory provision includes any subordinate legislation which is in force from time to time under that statute or statutory provision;
- 1.2.7 any reference to any statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;
- 1.2.8 for the avoidance of doubt, nothing herein contained or implied or done in terms of this Agreement shall prejudice or affect the powers, rights, duties and obligations of The City of Edinburgh Council or its statutory successors as local authority, Planning Authority, Building Control Authority, Roads Authority or similar such authority under or by virtue of any public or local Act, order, statutory instrument, regulation or byelaw or relieve the Developer of the necessity of obtaining from The City of Edinburgh Council or its statutory successors in said capacity all consents, permissions, warrants or approvals as may be requisite under or by virtue of any such public or local Act or others;
- 1.2.9 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words;
- 1.2.10 a document will be duly executed only if it is executed in such manner as meets the requirements of Section 3 and/or 7 or Schedule 2 of the Requirements of Writing (Scotland) Act 1995;
- 1.2.11 where at any one time there are two or more persons included in the expression "Developer" obligations contained in this Agreement which are expressed to be made by the Developer are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;
- 1.2.12 any reference to "Parties" is to the Developer and the Council unless otherwise stated;
- 1.2.13 any reference to "reasonable consent" or "reasonable approval" or "reasonably approved" is a reference to the prior written consent or approval of the Party in question, such consent or approval not to be unreasonably withheld or delayed.
- 1.3 **Headings**
- The headings in this Agreement are included for convenience only and are to be ignored in construing this Agreement.
- 1.4 **Schedule**
- The Schedule forms part of this Agreement.
- 2 **DESIGN DOCUMENTS**
- 2.1 **Variations to Base Drawings and Specification**
- 

- 2.1.4 Where the approval of the Council's Surveyor is required pursuant to any part of this Clause 2.1 the Developer will (a) use reasonable endeavours to provide to the Council's Surveyor in advance of making a formal request for such approval, a general description of the matters in respect of which approval may be necessary and (b) submit both electronically and by hand to the Council's Surveyor full details of the proposed alterations or additions including any appropriate drawings prior to any alterations being incorporated in the Building Contract. The Council's Surveyor shall consider and respond to such request as soon as practicably possible and if the Council's Surveyor does not respond in writing to the request for approval [REDACTED] of his receipt of the details referred to above in this Clause then he will be deemed to have granted the relevant approval.

2.2 Developer to provide Council with updated Base Drawings

At the time when the Desired Planning Permission is granted and in any event prior to the Commencement Date the Developer shall provide to the Council's Surveyor;

- 2.2.1 all new drawings or revisions of the drawings reproduced in Part 1 of the Schedule; and
- 2.2.2 all specifications of materials including updates to the specification reproduced in Part 1 of the Schedule

which have at that time been approved by the Planning Authority under and for the purposes of the Desired Planning Permission and all of which shall thereafter be construed as the Base Drawings and Specification in supplement and substitution (where appropriate) for the drawings and specification reproduced in Part 1 of the Schedule, for the purposes of this Agreement including the foregoing provisions of this Clause 2.

2.3 Developer to provide Council with new or amended Drawings

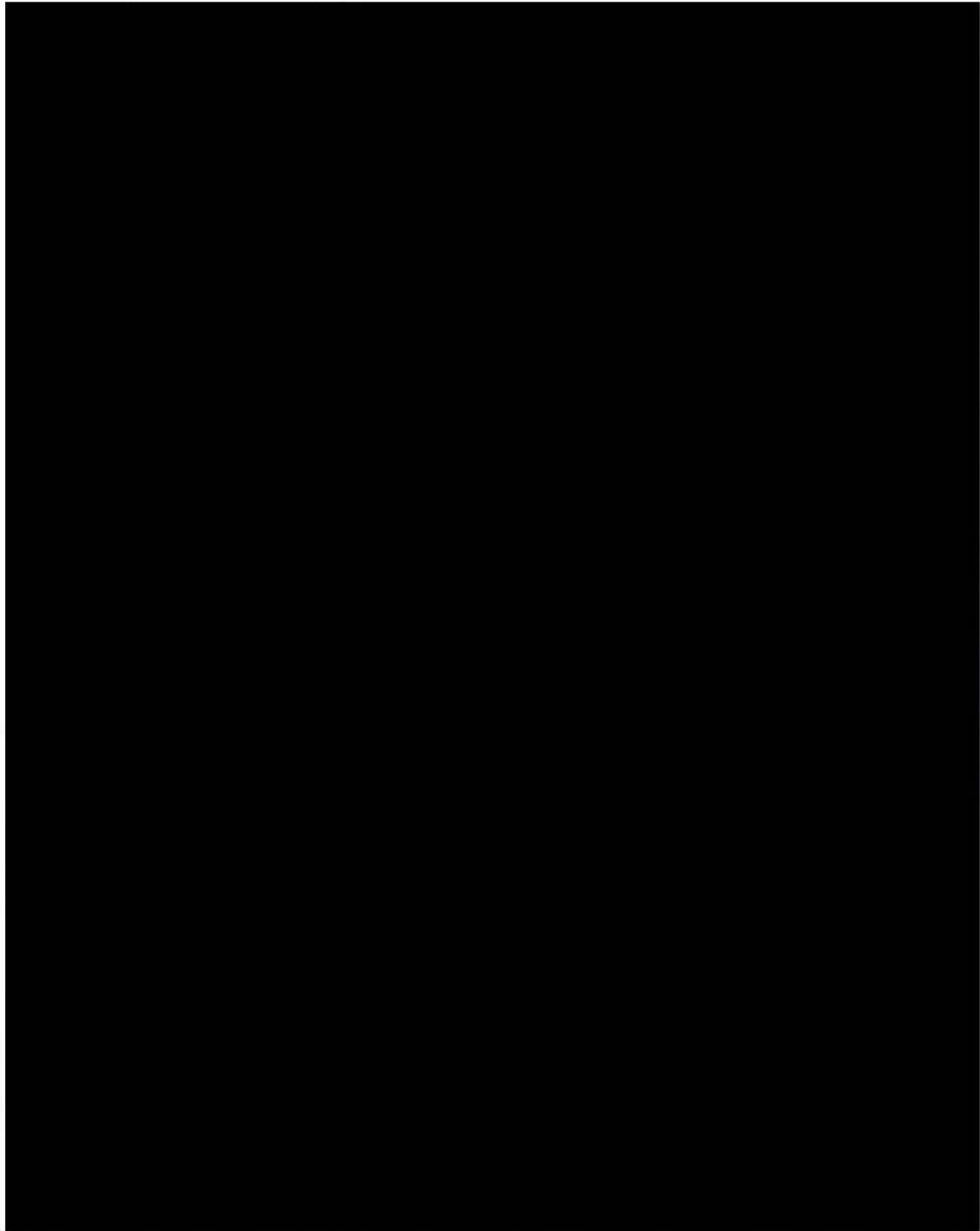
The Developer shall without delay provide to the Council's Surveyor copies of all new or amended drawings or amendments to the specification reproduced in Part 1 of the Schedule



which record all other changes to the Base Drawings and Specification and for which the Council's approval is required pursuant to Clause 2.1.

### 3 DEVELOPER'S TEAM AND CONTRACTOR

#### 3.1 Compliance with CDM Regulations



3.4 Developer to exhibit Building Contract

The Developer will exhibit to the Council if requested to do so a copy of the Building Contract duly executed by the Contractor and the Developer (but with the omission of the contract sum and other commercially sensitive information) together with evidence that the Contractor is maintaining in force professional indemnity insurance cover as required by the Building Contract.

3.5 Developer to procure compliance with Building Contract

The Developer must perform timeously all obligations incumbent on the part of the employer under the Building Contract.

3.6 Developer to procure performance of contracts

The Developer will diligently take all reasonable steps to procure the due performance by the Contractor of its obligations under the Building Contract and by each member of the Developer's Team of their respective contractual obligations to the Developer.

4 STATUTORY REQUIREMENTS AND PLANNING

4.1 Developer to give notices

The Developer will procure that the Contractor:

- (a) gives all necessary or usual notices under any Acts of Parliament affecting the Development or the Site;
- (b) gives notices to all water, gas, electricity and other statutory authorities as may be necessary in respect of the Development; and
- (c) pays all costs, fees and outgoings incidental to or consequential on any such notices.

4.2 Developer to obtain all Necessary Consents

4.2.1 As soon as practicable (having regard to when the Commencement Date is likely to occur) the Developer will (or will procure that others) apply for, and diligently take all necessary steps to obtain, all requisite approvals, consents or permissions (including an Energy Performance Certificate) required in addition to the Desired Planning Permission for the Development (the "Necessary Consents").

4.2.2 If requested by the Council's Surveyor copies of the Necessary Consents must be provided to the Council within 14 Working Days after the same are granted.



4.3 Developer to comply with all statutory requirements

The Developer will:

- (a) comply and procure compliance by the Contractor with all Acts of Parliament and any enforceable codes of practice of local authorities affecting the Site or the Development; and
- (b) procure the execution of all works and things required by all Acts of Parliament and comply with the lawful requirements of all authorities affecting the Site or the Development and all requirements of any competent statutory or other authorities (including water, gas, electricity and telecommunication authorities).

4.4 Developer to make submission to the Verifier

4.4 The Developer is responsible for ensuring that there is submitted to a verifier as defined in the Building (Scotland) Act 2003 a certificate of completion and that there is issued by the verifier a notice of acceptance thereof, all in respect of the Development (the "Completion Certificate") as soon as may be practicable on or after Practical Completion, and:

- 4.4.1 the Developer shall deliver a copy of the Completion Certificate to the Council as soon as practicable after such notice of acceptance is received from the verifier;
- 4.4.2 the issuing of the Completion Certificate shall be conclusive evidence for the purposes of the Missives and the Lease that Development and the Proposed Development (both as respectively defined therein) have been completed;
- 4.4.3 the Development Completion Date under the Missives and the Completion Date under the Lease (both as respectively defined therein) shall be the date of such notice of acceptance or if there is no date thereof shall be the date on which a copy of the Completion Certificate is delivered to the Council under Clause 4.4.1 above; and
- 4.4.4 following the ascertainment of the Completion Date in terms of Clause 4.4.3 the Developer shall prepare and send to the Council a memorandum ancillary to the Lease recording the Completion Date and the Council and the Developer shall respectively procure that such memorandum is validly executed by the Landlord by and Tenant (each as defined in the Lease).

5 ASSIGNATION



6 THE DEVELOPMENT

6.1 Developer to carry out the Development

The Developer will procure the diligent execution of the Development and the completion of the same in a good and workmanlike manner with good quality materials of their several kinds in accordance with and in compliance with:

- (a) the Building Contract and Base Drawings and Specification;
- (b) the Desired Planning Permission;
- (c) the Necessary Consents; and
- (d) the provisions of this Agreement.

6.2 Period for commencement and completion of the Development

Subject to the whole provisions of this Clause, unless and to the extent that the Developer is unable to do so by reason of a Permitted Delay Event

6.2.1 The Developer will use reasonable endeavours to cause Practical Completion to occur by the date falling [REDACTED] PROVIDED that such period shall be extended by a period equal to the aggregate of all periods of delay to the commencement and/or the carrying out the Development and the occurrence of the Date of Practical Completion caused by all Permitted Delay Events arising after the Commencement Date;

6.2.2 If the Developer in the reasonable opinion of the Council is not performing its obligations in accordance with Clause 6.1 or Clause 6.2.1 then the Council shall be entitled to give notice to the Developer specifying such period of time which shall [REDACTED] within which such non performance must be remedied and if the Developer fails to take steps reasonably satisfactory to the Council to remedy the same within the period specified in such notice the Council shall be entitled by giving a further notice at any time thereafter but prior to the date of issue of a Certificate of Practical Completion to rescind this Agreement on notice to the Developer. In the event of the Council properly rescinding this Agreement as aforesaid the Developer shall forthwith make any buildings remaining on the Site safe in accordance with all relevant statutory requirements to the Council's reasonable satisfaction.

6.2.3 [REDACTED]

- 6.2.4 For the purposes of the foregoing provisions, any dispute or difference between the Council and the Developer arising out of this Clause 6 including whether and the extent to which the Developer is performing its obligations under Clause 6.1 or Clause 6.2.1, whether a Permitted Delay Event has arisen, the extent thereof, and / or whether the Council is acting reasonably under and in terms of Clause 6.2.2 shall failing agreement between the Parties be referred to an arbitrator who shall be appointed under and in terms of Clause 12.11 and whose determination shall be final and binding on the Parties

6.3 Progress Reports

The Developer will also procure that the Council's Surveyor receives regular reports regarding the progress of the Development and of the anticipated date of Practical Completion.

6.4 Nuisance/Excessive Noise

The Developer will procure that subject to the proviso below the Contractor takes all steps as may be necessary to protect the sewers, drains, pipes and cables or other attachments in, under or adjoining the Site and to support, shore up and otherwise protect all party walls/fences and other walls/fences, buildings, roads and footpaths which may be adjacent to or adjoin the Site, does not interfere with any subsisting rights of statutory undertakers (including Sub-Station Lease) or with the rights, servitudes and privileges pertaining to any property adjoining the Site and does not cause or permit any nuisance, annoyance or disturbance on the Site or elsewhere in connection with the Development or anything which shall cause a nuisance, annoyance, disturbance or damage to the owners or occupiers of any adjoining or neighbouring properties PROVIDED THAT the Developer shall not be liable to the Council for a breach of the foregoing obligation where the nuisance or default arises due to circumstances not within the reasonable control of or not reasonably foreseeable by the Contractor and where the Contractor takes steps without delay to mitigate or remedy such nuisance or default.

6.5 Antiquities

The Developer must notify and hand over to the Council immediately all antiquities, coins or articles of value discovered on the Site during the carrying out of the Development; Provided that in the event of any items of archaeological, historical or geological interest being uncovered then these will remain in the ownership of the Council and the Developer will take such reasonable steps as are necessary at its own expense to protect such items and will allow the Council access to the Site to inspect and if required remove such items.

6.6 Deleterious Materials

The Developer undertakes to the Council to instruct the Contractor not to use or specify or permit any member of the Contractor's Team to use or specify in the Development any Deleterious Materials. The Developer will procure that the Architects and the Contractor issue written confirmation to the Council prior to Practical Completion that to the best of their

knowledge and belief no such Deleterious Materials have been used under the Building Contract within the Buildings and the Site.

6.7 Repairing Obligations after Completion

6.7.1 Without prejudice to the foregoing provisions of this Clause 6 the Developer will at all times from Completion until Practical Completion procure that the Buildings (except and to the extent that they are to be or have been demolished under and in accordance with the Desired Planning Permission) are suitably protected and maintained in a structurally sound condition and that any damage suffered after Completion is made good without delay (having regard to the circumstances then prevailing if the Development has commenced) either by the carrying out of the Development or by the Developer effecting the repair of the Buildings all as may be necessary and appropriate to render the same wind and watertight and free from structural damage;

6.7.2 For the avoidance of doubt, in the period from the Commencement Date until Practical Completion the obligations, terms and provisions of this Clause 6.7 shall prevail over the obligations imposed by Clause 6.1 of the Lease;

6.7.3 In the event that the Developer shall fail to perform the obligations in Clause 6.7.1 then the Council shall be entitled to give a notice specifying the damage or want of repair complained of and a reasonable period of time within which the Council reasonably requires the Developer to make good the same or to take reasonable protective measures all to the reasonable satisfaction of the Council;

6.7.4 If the Developer fails to make good the damage or want of repair specified in a notice given by the Council under Clause 6.7.3 the Council may at any time after the expiry of the period stated in such notice re-enter the Site and the Buildings with contractors and all others authorised by the Council and carry out the repairs or other works according to such notice and the Developer shall thereupon be obliged to make payment to the Council of the whole costs including associated fees and value added tax which have been properly and reasonably incurred by the Council in that regard together with interest at the rate of 4% above Bank of England official lending rate from the date of demand in case of a failure to make payment of such costs or any part thereof within fourteen (14) days of a written demand by the Council.

7 ACCESS, SITE MEETINGS, REPRESENTATIONS AND REPORTS

7.1 Access by Council

7.1.1 Subject to Clauses 7.1.2 and 7.1.3 the Council's Surveyor (on giving reasonable prior notice to and by prior arrangement with the appropriate member of the Developer's Team) may enter upon the Site at all reasonable times during the carrying out of the Development:

- (a) to view the state and progress of the Development;
- (b) to inspect the materials and workmanship; and
- (c) to ascertain generally that the Developer's obligations under this Agreement have been and are being duly performed and observed.

7.1.2 The Council's Surveyor must:

- (a) comply with the instructions of the Contractor and the Contract Administrator;
- (b) not impede the progress of the Development; and
- (c) cause the least practicable inconvenience and disturbance to the Development.