



- 7.1.3 The Council must make good at their own cost all physical loss or damage to the Development and/or the Site arising out of the exercise of such rights of access by the Council's Surveyor.

8 PRACTICAL COMPLETION OF DEVELOPMENT

8.1 Developer to give Council notice of inspection

The Developer will procure that the Contract Administrator gives to the Council's Surveyor [REDACTED] of each date on which the Contract Administrator intends to carry out an inspection of the Development in anticipation of issuing a Certificate of Practical Completion ("the PC Inspection Date").

8.2 Joint Inspection

The Developer will procure that if the Council's Surveyor so requests, the Council's Surveyor is given an opportunity to inspect the Development prior to the PC Inspection Date accompanied by the Contract Administrator or such other representative of the Developer as the Developer may nominate.

8.3 Contract Administrator's discretion not to be fettered

For the avoidance of doubt the Contract Administrator has the sole and unfettered discretion to issue a Certificate of Practical Completion at the PC Inspection Date or at any other time.

8.4 Contract Administrator to provide Council with a Certificate of Practical Completion

The Developer will procure that a copy of the Certificate of Practical Completion (incorporating the Contract Administrator's proposed snagging list) is delivered to the Council's Surveyor within five Working Days of its issue.

9 INSURANCE

9.1 Developer to procure insurances

The Developer will procure that the insurances required to be maintained by the Contractor pursuant to the Building Contract for the Development and all fixed and unfixed goods and materials are effected by the Contractor with such reputable insurance office or with underwriters and through such reputable agency as the Contractor determines against loss or damage by the Insured Risks for the full reinstatement cost for the time being together with a sum to cover professional fees until the Practical Completion.

9.2 Developer to insure

Except and to the extent that similar insurance cover is effected and is being maintained by the Contractor under Clause 9.1 the Developer will maintain in force, or procure there are maintained in force:

- (a) from Completion until Practical Completion such insurances of the existing Buildings as the Council may reasonably request against loss or damage by the Insured Risks and for such sums as the Developer and the Council may reasonably approve, being not less than the full reinstatement costs together with a sum to cover professional fees and other incidental costs and expenses and the costs of shoring-up demolition and site clearance and similar expenses; and
- (b) insurances against property owners and third party liabilities for not less than [REDACTED]



9.3 Developer not to void policy

The Developer shall not knowingly do or suffer to be done anything which may render voidable any policy or policies of insurance effected under the foregoing provisions of this Clause 9.

9.4 Developer to pay premiums and produce policy

The Developer will pay or cause to be paid all premiums and other monies necessary to effect and maintain such insurance as are required under this Clause 9.

9.5 Developer to reinstate

9.5.1 If the Buildings or the Site are damaged or destroyed by any of the Insured Risks prior to Practical Completion the Developer must forthwith give notice in writing to the Council's Surveyor upon such damage or destruction being brought to the Developer's attention.

9.5.2 If there is damage or destruction prior to Practical Completion due to the occurrence of an Insured Risk the Parties will collaborate (all to the extent necessary) to procure payment or settlement of all claims under the insurances to be maintained in accordance with Clause 9.1 and Clause 9.2 and the Developer will use reasonable endeavours to obtain all the Necessary Consents and other statutory permissions necessary for the rebuilding or reinstatement of Buildings as they were prior to such damage or destruction and/or the Site.

9.5.3 As soon as reasonably practicable after receipt of Necessary Consents and other statutory permissions the Developer will exhibit these to the Council's Surveyor.

9.5.4 The Developer will expend or procure the expending of the insurance proceeds in rebuilding or reinstating Buildings as they were prior to such damage or destruction and/or the Site and the relevant provisions of this Agreement will apply to such rebuilding or reinstating in the same manner as they applied to the original Development of the Site by the Developer under and in accordance with this Agreement declaring that if the insurance monies are to any extent insufficient, or are in whole or in part irrecoverable by reason of any default by the Developer in the performance of its obligations under this Clause 9 then the Developer shall be bound to make up any shortfall in the cost of making good such damage or destruction, out of its own monies.

9.6 Insurance proceeds

9.6.1 Subject to Clause 9.5.4 and to the whole provisions of this Clause all insurance proceeds received by the Developer in advance of reinstatement will be drawn upon by the Developer for the purpose of only rebuilding, repairing or otherwise reinstating the Buildings as set out in Clause 9.5

9.6.2 Without prejudice to the Developer's obligations under Clause 9.5 if the Developer is refused the Necessary Consents and other statutory permissions referred to in Clause 9.5.2 or if for some other material reason such reinstatement is impossible (not on account of any failure by the Developer itself) the Developer shall be entitled to give notice to the Council, and after such notice is given:

- (a) either Party may (by giving further notice to the other) resile from this Agreement (and simultaneously the Parties will terminate the Lease in accordance with the provisions of Clause 19.4.3 thereof) without costs, damages or penalties being due to or by either Party subject to Clause 9.8 and without prejudice to any claim competent to either Party for any obligations to the other Party for any antecedent breach of this Agreement;

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- (b) as soon as practicable after service of such notice the Developer shall make safe any Buildings remaining on the Site in accordance with all relevant statutory requirements to the Council's reasonable satisfaction; and
 - (c) all proceeds of the Insurances effected by the Developer in terms of Clause 9.2 will be utilised first in making any Buildings remaining on the Site safe in accordance with the provisions of Clause 9.6.2(b) and then the surplus (if any) of such proceeds above the costs of making such Buildings safe (the "Surplus") will be divided as soon as possible between the Council and the Developer *pro rata* according to the values of their respective interests in the Site and the Development as at the time when such damage or destruction occurs, in accordance with the corresponding provisions of the Lease but subject to the minimum amount to be receivable by the Developer being the costs (including consequential fees finance costs and interest) paid or incurred by it in acquiring the Site and in the carrying out of the Development at that time or if lower, the Surplus.

9.7 Public liability and non-negligence insurance

Until the Practical Completion the Developer will insure or cause the Development to be insured against public liability on the part of the Council, the Developer and the Contractor in an amount being [REDACTED] in insurance company of repute and shall produce a copy of such policy or the certificate on demand together with evidence of payment of the current premiums.

9.8 To pay Irrecoverable insurance monies

In the event of the Site or such other property or any parts thereof being destroyed or damaged by any of the Insured Risks and the insurance money under any insurance against the same being wholly or partly irrecoverable by reason solely or in part of any act or default of the Developer or the Contractor or those for whom the Developer is responsible for in law and in the event that the Developer gives a notice under Clause 9.6.2 to the effect that reinstatement is impossible and a Party thereafter resiles from this Agreement, then the Developer will at the option of the Council either (a) pay to the Council within fourteen (14) Working Days of written demand to be given after the sum aftermentioned has been ascertained a sum equal to the whole or (as the case may require) the irrecoverable portion (including professional and other fees for completely rebuilding and reinstatement of the Building and/or the Site or relevant part thereof in terms of this clause 9.8) for which the Developer is responsible of such Irrecoverable insurance monies or (b) make any buildings remaining on the Site safe in accordance with all relevant statutory requirements (to the Council's reasonable satisfaction).

10 PRECONDITION

10.1

10.2

12 MISCELLANEOUS

12.1 Developer to supply Council with "as-built" drawings etc

As soon as practicable and in any event within six weeks after Practical Completion the Developer, will procure that the Council is supplied with the following (insofar as not already in the Council's possession) in CD or another electronic format:

- (a) the final "as-built" drawings of the Development including all variations;
- (b) a copy of the health and safety file in respect of the Development complying in all respects with the CDM Regulations;
- (c) a schedule listing the names and addresses of all contractors, and sub-contractors with design responsibility, who have been involved in or concerned with the Development.

12.2 Step In

The Council acknowledges that the Developer may from time to time require funding from a Creditor or the Funder in connection with the Development and in arranging such funding a Creditor or the Funder may require as a condition of the availability of that funding to enter into a step in agreement with the Council to cover (without limitation) the following principal matters:

- 12.2.1 an obligation on the Council not to seek to terminate or rescind this Agreement or to take steps to irritate the Lease and not to take any action to wind up, appoint an administrator and/or other insolvency practitioner or sanction a voluntary arrangement (or similar) in relation to the Developer without first giving a prescribed period of notice to the Creditor or the Funder.



12.2.2 a right (without giving rise to any express or implied assignation) to allow the Creditor or the Funder to remedy prior breaches by the Developer of this Agreement and otherwise to ensure that the obligations the Developer are complied with all so as to prevent any circumstances arising under which the Council could seek to terminate or rescind this Agreement and/or take steps to irritate the Lease

12.2.3 the Council further acknowledge that it will act reasonably and in good faith to negotiate the whole terms and provisions of a formal step in agreement which incorporates the foregoing principles and such other terms as a Creditor or Funder might reasonably require, and the Council undertakes that it shall validly execute and deliver such a step in agreement where reasonably requested by the Developer or by a Creditor or the Funder.

12.3 No Waiver

The failure of any Party at any time to require performance by any other Party of any provision of this Agreement in no way affects the right of such Party to require performance of that provision.

12.4 Merger/conflict with prior agreements

12.4.1 The Agreement will, as at the Agreement Date, represent and express the full and complete agreement between the Council and the Developer relating to this Agreement or any amendment or variation of this Agreement and will supersede any previous agreements, representations or others between the Council and the Developer relating to the development of the Site. No variations of any of the terms or conditions of this Agreement shall be effective and varied unless constituted in writing and validly executed by or on behalf of both the Developer and the Council;

12.4.2 In the event of any conflict or inconsistencies between the Missives and this Agreement arising or applicable to the time prior to the time when the Precondition is purified the terms and provisions of the Missives shall prevail, but in the event of any such conflict or inconsistencies arising or applicable to the time after the Precondition is purified, then this Agreement shall prevail.

12.5 Proposals

The Council hereby declare confirm and agree (a) that the Proposals have been conceived by the Developer alone, and that the Base Drawings and Specification constitute the Developer's own design for the Development (it being declared for the avoidance of doubt that this Agreement does not constitute a contract of service or any form of joint venture between the Council and the Developer or a contract for the procurement of works by and at any cost to the Council) and (b) that no payment of money or money's worth is or will become due by the Council to the Developer in consideration for the carrying out of the Development.

12.6 Notices and deemed receipt

12.6.1 Any notice to be given under, or in connection with the matters contemplated by this Agreement must be in writing and served by sending it by fax (and thereafter confirmed by delivery or post) or by delivering it personally sending it by pre-paid recorded delivery or registered post to the address and for the attention of the relevant Party set out in Clause 12.7.3 (or as otherwise notified by that Party). Subject to Clause 12.7.2 any notice will be deemed to have been received:

(d) at the time of delivery if delivered personally;

(e) 48 hours from the date of posting if sent by pre-paid recorded delivery or registered post;



(f) at the time of transmission if sent by fax.

- 12.6.2 If deemed receipt occurs before 9am on a Working Day the notice will be deemed to have been received at 9am on that day and if deemed receipt occurs after 6pm on a Working Day or on a date which is not a Working Day, the notice will be deemed to have been received at 9am on the next Working Day.

12.6.4 Notice given under this Agreement may not be validly served by e-mail.

12.7 No partnership

This Agreement does not create and will not in any circumstances create or be deemed to create a partnership between the Parties.

12.8 No agency

12.8.1 The Developer is not and will not at any time hold itself to be held out as the agent of the Council for any purpose and under no circumstances will the Developer have the authority to bind the Council nor hold itself out to the public as having such authority.

12.8.2 All contracts and agreements including the Contracts of Engagement entered into by the Developer pursuant to this Agreement will be contracts and agreements between the Developer as principal and the respective third parties and the Council will have no obligation or liability for these contracts and agreements



12.9 Good Faith

The Council and the Developer will each act in good faith in relation to their rights and obligations in this Agreement.

12.10 Disputes

- 12.10.1 Except as otherwise provided for in this Agreement any dispute or difference arising out of, under or in connection with this Agreement (a "Dispute") will be referred at the request of either Party for decision to a single Arbitrator to be appointed by the agreement of the Parties or, in the absence of such agreement, depending upon the scope, extent and nature of the Dispute on the application of either Party by the Chairman for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors or the President for the time being of the Law Society of Scotland, which Arbitrator shall have power to award expenses to or against either Party.
- 12.10.2 Such person shall be a single Arbitrator and the decision of the Arbitrator shall be final, it being agreed that neither party shall invoke the provisions of the Arbitration (Scotland) Act 2010 to state a case to the Court and the Arbitrator's decision is final and the parties may not appeal the decision to the courts except in the case of manifest error.
- 12.10.3 The Parties will continue to comply with, observe and perform all their obligations under this Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution in accordance with Clause 12.11.2.
- 12.10.4 The Parties will give effect immediately to every decision of each Arbitrator when his determination of the Dispute is issued to both Parties.

12.11 Council's heritable interest

Subject to the proviso below the Council undertakes not to sell or dispose of its heritable interest in the Site prior to Practical Completion unless the Council has first obtained the consent in writing of DHP which consent shall not be unreasonably withheld but may be given subject to reasonable conditions including a requirement that the Council assigns this Agreement and the Missives to the person acquiring the Council's interest, PROVIDED that there shall be no necessity to obtain such consent if the Council becomes obliged to sell or dispose of its interest (other than pursuant to the implement of a contract voluntarily entered into by the Council) and in that case the Council shall inform the Developer, and use reasonable endeavours to assign this Agreement and the Missives to the person acquiring the Council's interest.

12.12 Confidentiality

- 12.12.1 Subject always to the terms of the Freedom of Information (Scotland) Act 2002 ("FOISA") or the Environmental Information (Scotland) Regulations 2004 ("EIR"), but subject to the proviso below the Council shall not and shall ensure that it/or its employees do not without the written consent of the Developer at any time during the duration of this Agreement divulge to any third party any information in relation to the design of the Development which comes into its or their possession unless and until such information is already in the public domain (other than and excepting information which has come into the public domain due to a breach by CEC or its employees of the foregoing obligations in this Clause) and PROVIDED ALWAYS THAT: (a) it is acknowledged by the council that certain terms of this Agreement are commercially sensitive and that disclosure of such terms, including the identity of the Funder are, in the Developer's view, exempt from disclosure under FOISA or EIR and as such need not be disclosed by the Council (b) the Council shall give notice to the Developer of each request for disclosure relative to this Agreement which they receive as soon as reasonably practicable after receipt and (c) prior to any disclosure being made in respect of any such request under FOISA or EIR, the Council shall afford to the Developer a

reasonable opportunity to make representations about whether and to the extent that the terms of this Agreement ought properly to be disclosed and the Council shall pay due regard to any reasonable representations made by the Developer but that without prejudice to the provisions of Clause 1.2.8 above and to the Council's ultimate discretion on any matters of disclosure under FOISA or EIR.

12.12.2 The Council is committed to meeting its responsibilities under FOISA and EIR. Accordingly, all information referred to in this Agreement may require to be disclosed or published by the Council. If the Developer considers that specific information provided to the Council is potentially exempt from disclosure under FOISA or EIR (where for example it is considered commercially confidential) the Developer should identify exactly which information it considers to be exempt, state the period of sensitivity and provide justification for its assertions (for example identify what harm may result from disclosure). The Developer should note that the Council is not bound by the Developer's view and may in its absolute discretion disclose and/or publish any such information in order to comply with FOISA or EIR.

12.12.3 The provisions of this Clause 12.12 shall apply during the continuance of this Agreement and after its termination howsoever arising.

12.12.4 Any press release after Completion relating to this Agreement and the Development are to be agreed in writing between the Developer and the Council prior to its publication (the Parties acting reasonably)

12.13 Governing Law and Jurisdiction

This Agreement is governed by the laws of Scotland and the Scottish Courts have non-exclusive jurisdiction.

(ii) IN WITNESS WHEREOF these presents on this and the 23 preceding pages are executed as follows:

SUBSCRIBED and SEALED for and on behalf of
THE CITY OF EDINBURGH COUNCIL

at
on the day
of 2014
by

.....

Full Name





SUBSCRIBED for and on behalf of
DUDDINGSTON HOUSE PROPERTIES LIMITED

at
on the day
of 2014

by

.....

Director

.....

Full Name

before this witness

.....

Witness

.....

Full Name

.....

Address

.....