



DATED

2012

DEVELOPMENT AGREEMENT

relating to

**NORTH HERTFORDSHIRE MUSEUM AND HITCHIN TOWN
HALL**

between

NORTH HERTFORDSHIRE DISTRICT COUNCIL

and

HITCHIN TOWN HALL LIMITED

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Computer Disc of Approved Documents

THIS AGREEMENT is dated

2012

PARTIES

- (1) NORTH HERTFORDSHIRE DISTRICT COUNCIL of Council Offices, Gernon Road, Letchworth SG6 3JF (**Council**).
- (2) HITCHIN TOWN HALL LIMITED a charity incorporated and registered in England and Wales with company number (07974116) whose registered office is at 2 Croft Chambers, 11 Bancroft, Hitchin, Hertfordshire SG5 1JQ and whose registered Charity No. is 1148921 (**HTH Limited**).

BACKGROUND

- (A) The Council owns the Building but as to that part of the Building comprising the Trust Property the Council holds that property as sole trustee for the Trust.
- (B) It is intended that simultaneously with this Agreement HTH Limited shall enter into the Option to purchase parts of 14 and 15 Brand Street with vacant possession from the Hitchin Property Trust Limited.
- (C) The Council has agreed to work with HTH Limited in order to progress a scheme to refurbish the Building and parts of 14 and 15 Brand Street to create the New Site from which the Council will operate a district museum and HTH Limited will operate a community facility.
- (D) The Parties remain committed to the exploration of an expanded future scheme that may include the remainder of 15 Brand Street to form this community facility and agree to consider a variation of this Agreement should this be possible within the funding available at the time and is agreed between the Parties to be viable and achievable.
- (E) The Planning Permissions for the Development have been obtained.
- (F) HTH Limited is to contribute the HTH Limited Contribution to the Development by way of:
 - (a) one or more direct payments to the Building Contractor; and
 - (b) the completion of the Tenant's Works.

The remainder of the cost of the Development will be borne by the Council.

- (G) The objectives for entering into this Agreement are to provide:
- (H) (a) a North Hertfordshire District-wide museum; and

- (b) to establish and retain Hitchin Town Hall as a first rate community facility to ensure compliance with the underpinning principles of:
 - (i) the Trust Objectives; and
 - (ii) The HTH Limited Objectives.
- (I) The Council enters into this Agreement pursuant to section 111 and section 123 of the Local Government Act 1972, section 1 of the Localism Act 2011 having regard to the Council's Decision Making Background and pursuant to decisions of the Council made on 10 May 2012 and 15 October 2012.
- (J) The Trust enters into this Agreement pursuant to the decisions of the Cabinet Subcommittee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) made on 22 May 2012 and 9 October 2012.
- (K) HTH Limited enters into this Agreement pursuant to board resolution of HTH Limited passed on 14 October 2012.
- (L) The target date for completion of the Development is 14 November 2014 however the Parties acknowledge that there are factors outside of either Party's control which may result in the Development not being complete by this date.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Acceptable Contractor Terms: the terms conditions and all other requirements of the Council outlined in the tender documents to be drawn up by the Professional Team.

Approved Documents: all plans, specifications, drawings, engineering calculations, bills of quantity and other data that may be required in connection with the Development as are drawn up by the Architect to give effect to the main hall retention scheme outlined on pages 24 -31 of the Feasibility Study and further detailed in the Stage C design report dated December 2010, the mechanical and electrical Stage C design report dated 17 December 2010, the architectural restoration specification clauses, the Design and Access Statement, and the Stage D cost plan dated March 2011 including (where applicable) any variations or amendments made by the Council in accordance with clause 1 of Schedule 2 of this Agreement and attached to this Agreement as a 'Computer Disc of Approved Documents'.

Architect: Buttress Fuller Alsop Williams Architects of 31-33 Princess Street, Manchester M2 4BF or such other person as may be appointed as a replacement architect from time to time

ACF : The Adventure Capital Fund Limited (registered company number 05777484)

ACF 14 Brand Street Charge: the legal charge over parts of 14 and 15 Brand Street to be entered into between HTH Limited (as chargor) and ACF (as chargee) on the date of completion of the purchase of this property by HTH Limited.

ACF Deed of Agreement: a Deed of Agreement entered into between ACF and the Council dated 15 October 2012 for the completion of the building works on land and buildings to form North Hertfordshire Museum and Hitchin Town Hall

Budget: the budget for the Development (which for the avoidance of doubt includes £490,000 of the HTH Limited Contribution) being £3,930,102 exclusive of VAT

Building: Hitchin Town Hall including Hitchin Town Hall Gymnasium, Brand Street, Hitchin, SG5 1JE as is registered at the land registry under title numbers HD488762 and HD506432 as is shown edged red on plan A

Building Contract: a building contract for the Development

Building Contractor: the contractor to be appointed by the Council to carry out the Development from time to time

14 Brand Street: the freehold property forming part of 14 and the rear of 15 Brand Street, Hitchin shown on the plan attached to the TP1 in Annex 1 Part 2 of this Agreement.

Café: shall have the meaning given to it by the Lease

CDM Co-ordinator: Robert Noble Associates Limited of Marken House, 22 Bradgers Hill Road, Luton, Beds or such other person as may be appointed as a replacement for the time being by the Council, to be the CDM Co-ordinator for the purposes of the Development and the CDM Regulations.

CDM Regulations: the Construction (Design and Management) Regulations 2007.

Certificate of Practical Completion: the Architect or such other member of the Professional Team so authorised to issue a certificate or written statement in accordance with the Building Contract certifying that the whole of the Development is practically complete according to the terms of the Building Contract.

Client: the client as defined by the CDM Regulations.

Collateral Warranties: The form of warranties annexed hereto at Annex 7 (subject to such reasonable amendments the relevant warranty provider may request and which are approved by ACF (such approval not to be unreasonably withheld or delayed)) to be provided in favour of ACF by:

- (a) the Architect, the Building Contractor and its sub-contractors where the manner of procurement for the Architect's services requires the Architect to accept 100% of the liability and responsibility for all design input required in respect of the Works, notwithstanding the Architect is to appoint sub-consultants for the provision of specialist design input; or
- (b) each member of the Professional Team, the Building Contractor and its sub-contractors should any other form of procurement be adopted.

Contract Procurement Rules: the contract procurement rules contained in the Constitution

Constitution: the constitution of North Hertfordshire District Council at the time of the relevant decision or action

Contract Rate: four percent above the base lending rate from time to time of the Bank of England

Council's Decision Making Background: the relevant decisions that have been made by the Council in relation to the Development and the reports and documents influencing such decisions as are referred to in the Council's report to full Council dated 10 May 2012 and 15 October 2012.

Council's Solicitor: the Corporate Legal Manager at North Hertfordshire District Council, Council Offices, Gernon Road, Letchworth, Hertfordshire SG6 3JF

Decision: a decision taken by the Council or the Trust (as the case may be) in accordance with clause 7 of this Agreement.

Defects Liability Period: the defects liability period or rectification period for the making good of defects, shrinkages or other faults in the Works under the Building Contract being a period of not less than 12 months from the issue of the Certificate of Practical Completion.

Designated Council Officer: an employee of the Council whose role it is to advise in the area relevant to a Decision

Development: the demolition of parts of 14 and 15 Brand Street including works required under the Party Wall Act 1996, and the refurbishment improvement and integration of the Building and parts of 14 and 15 Brand Street to deliver enhanced community facilities and a new museum facility on the New Site by the carrying out of the Works pursuant to the Planning Permission and the Approved Documents

Development Commencement Date: shall be 10 Working Days after the Effective Date

Development Period: the period from and including the Development Commencement Date up to and including the Practical Completion Date.

Dispute: a dispute issue difference question or claim as between the Council and HTH Limited relating to or arising at any time out of this Agreement

Dispute Notice: a notice requiring a Dispute to be referred to a Specialist and proposing an appropriate Specialist

Effective Date : is the date defined in clause 3.1

Effective Longstop Date: 31 March 2013

Feasibility Study: the Hitchin Town Hall Museum Feasibility Study prepared by the Architects and entitled Report to Council 11 February 2010

Hall: the area to be demised to HTH Limited as is defined as the Property in the Lease

HTH Limited Development Requirements: HTH Limited development requirements in relation to the Building as are specified in Annex 6, including any variations or amendments agreed by the parties in writing following (if necessary), the exhaustion of the Liaison Process.

HTH Limited Contribution: Five Hundred and Fifty Thousand Pounds (£550,000.00)

HTH Limited Objectives: The provision and maintenance of a Town Hall for the benefit of the inhabitants of Hitchin, Hertfordshire, United Kingdom and its surrounding area in particular but not exclusively by:

- (1) managing Hitchin Town Hall to meet the charitable needs of the inhabitants of Hitchin, Hertfordshire, United Kingdom and its surrounding area;
- (2) ensuring the Hall continues to be operated for the benefit of the inhabitants of Hitchin, Hertfordshire, United Kingdom and its surrounding area for as long as the Charity has responsibility for its management;
- (3) consulting with authorised representatives of properly constituted local community groups regarding their use of the Hall;
- (4) liaising with the Museum Services of the Council and the Trust (registered charity number 233752) in managing the common aspects of the building; and
- (5) conducting any other business needed to successfully deliver the Objects.

HTH Limited Operational Date: the date by which HTH Limited wish to commence operations as a community facility in the Building being 30 September 2014

HTH Limited's Solicitor: Foreman Laws of 25 Bancroft, Hitchin, Hertfordshire, SG5 1JN or such other firm of solicitors for the time being that may be notified in writing by HTH Limited to the Council's Solicitor

Insured Risks: means fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, impact by aircraft and articles dropped from them, impact by vehicles, riot, civil commotion

Lease: the lease of the Hall in the form of the draft annexed to this Agreement at Annex 2 or as amended in accordance with Clause 4.3 of this Agreement.

Lease Completion Date: the day that is 10 Working Days after the Practical Completion Date

Liaison Process: the process referred to in Clause 16.2 of this Agreement

Management Agreement: a community use and management agreement to be entered into simultaneously with the grant of the Lease between the Council and HTH Limited in the form of the draft at Annex 3 or as amended in accordance with Clause 4.3 of this Agreement.

M&E Engineer: the mechanical and electrical engineer appointed by the Council, the Architect or the Building Contractor in relation to this Agreement and the Building

Contract or such other person appointed as a replacement mechanical and electrical engineer

New Site: the land on which the Building and 14 Brand Street are located as is shown edged red on the Site Plan

Option: the option in the form of the draft annexed to this Agreement at Annex 4 in favour of HTH Limited to acquire 14 Brand Street, Hitchin to be made between the Hitchin Property Trust Limited (1) and HTH Limited (2)

Option Notice: a notice exercising the Put Option substantially in the form set out in Schedule 4 and served in accordance with Clause 11

Party: the Council or HTH Limited and where the context allows Parties shall mean both of them

Part 1 Conditions: Part 1 of the Standard Commercial Property Conditions (Second Edition) and **Condition** means any one of them.

Part 2 Conditions: Part 2 of the Standard Commercial Property Conditions (Second Edition).

Planning Permissions: the detailed planning permissions and listed building consents dated 18 March 2011 from North Hertfordshire District Council under reference numbers 11/00171/1, 11/00267/1LB and 11/00268/1CAC.

Practical Completion Date: the date stated in the Certificate of Practical Completion.

Professional Team: The Architect, the CDM Co-ordinator, the Quantity Surveyor, the Structural Engineer, the M&E Engineer and any other specialist advisors or sub-consultants that may, be appointed for the time being in connection with the design and/or management of the Development.

Purchase Price: £250,000.00 (exclusive of VAT)

Put Option: the option granted by the Council to HTH Limited in Clause 11 in respect of 14 Brand Street

Put Option Completion Date : 10 working days after exercise of the Put Option

Put Option Period : the period from and including the date of this Agreement to the Lease Completion Date

Put Option Transfer: means the form of transfer attached to this as Annex 8

Quantity Surveyor: the quantity surveyor appointed by the Council, the Architect or the Building Contractor in relation to this Agreement and the Building Contract or such other person as may be appointed as a replacement quantity surveyor

Requisite Consents: building regulation consents, by-law approvals, and any other consents, licences and authorisations required from any competent authority, statutory undertaker or person either for the carrying out of the Development or for its intended use as contemplated by the terms of the Planning Permission.

Site Plan: means the plan attached to the Lease and marked as the Site Plan

Specialist: a person qualified to act as an independent expert or arbitrator in relation to a Dispute having experience in the profession in which they practice of at least 10 years immediately preceding the date of referral.

Structural Engineer: the structural engineer appointed by the Council, the Architect or the Building Contractor in relation to this Agreement and the Building Contract or such other person as may be appointed as a replacement structural engineer

Target Completion Date: the date by which the Council anticipates the Development will be available for public use being 14 November 2014

Tenant's Works: the fitting out of the kitchen forming part of the Café in accordance with plans and specifications to be submitted to the Council for approval in accordance with clause 6.1(d)

Transfer Date: the date of actual completion of the transfer of 14 Brand Street from HTH Limited to the Trust

Trigger Event: means any of the following:

- (a) the Works have either not commenced or, notwithstanding that they have commenced, are not being progressed in a manner that would enable the Council, in the reasonable opinion of the Architect, to achieve the Target Completion Date, where there are no circumstances prevailing or that have existed that would enable the Building Contractor to claim more time for completing the Works under the Building Contract; or
- (b) this Agreement is terminated by HTH Limited in accordance with clause 8.3 at any time prior to the Lease Completion Date; or
- (c) the Practical Completion Date has not for any reason been achieved by 14 November 2016

Trust: the Hitchin Town Hall Gymnasium and Workmans Hall Trust (registered charity number 233752) of which the Council is the sole trustee

Trust Objectives: the objectives set out in a Conveyance dated 5 March 1934 made between Francis Ransom and Hugh Exton Seeböhm (1) and the Urban District Council of Hitchin (2) namely "for use as a gymnasium for the benefit of the inhabitants of the Urban District of Hitchin.... And for such other purposes as are mentioned in Section 6 sub-section (3) of the Museums and Gymnasiums Act 1891 and also ...for any other purpose for the benefit of the inhabitants of the said District for which the Council under their statutory powers is entitled to use buildings and land vested in them"

Trust Property: that part of the Building as is registered under title number HD506432

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day that is not a Saturday, Sunday, a bank holiday or a public holiday in England.

Works: the works described in the Building Contract and the Approved Documents.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal responsibility).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a 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.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule.
- 1.13 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 1.14 Unless this Agreement otherwise expressly provides, a reference to the **Building, 14 Brand Street, the Hall, the New Site** or the **Development** is to the whole and any part of it.
- 1.15 Any reference to the Council's **consent** or **approval** being required is to a consent or approval in writing which must be obtained by HTH Limited before the relevant act is taken or event occurs.
- 1.16 Any references to the rights or obligations of the Trust under this Agreement are to the Council acting in its capacity as sole trustee of the Trust.
- 1.17 Any reference to the Trust's **consent** or **approval** being required is to a consent or approval in writing which must be obtained by HTH Limited before the relevant act is taken or event occurs.

2. COMMENCEMENT

- 2.1 This Agreement comes into force on the date that appears first on page 1.
- 2.2 On the date of this Agreement the Council shall appoint the Architect.
- 2.3 On the date of this Agreement HTH Limited shall complete the charge referred to at clause 12.2 below as a requirement of ACF to advance the HTH Limited Contribution to HTH Limited.

3. EFFECTIVE DATE

- 3.1 The Effective Date is the next Working Day after the Council serves notice on HTH Limited confirming that the Development Pre-condition has been satisfied
- 3.2 The Development Pre-condition is that the Council has procured the Building Contractor subject to the formal award process.

4. AGREEMENT

- 4.1 On or after the Effective Date HTH Limited, and subject to Clause 5(1)(b), before the Development Commencement Date simultaneously,
- (i) the Council shall formally award the Building Contract to the Building Contractor,
 - (ii) HTH Limited shall exercise the Option and complete the purchase of 14 Brand Street and
 - (iii) the Council shall commence the Development on the terms set out in Schedule 2.
- 4.2 HTH Limited hereby grants to the Council licence to enter 14 Brand Street from the Development Commencement Date to execute the Works (including the demolition of the building thereon) and any variation of the Works permitted under this Agreement

provided that the Council shall use reasonable endeavours to ensure that the Building Contractor causes the minimum of disturbance to the owners and occupiers of 15 Brand Street Hitchin and complies with the terms of any party wall agreement relating thereto and agrees to indemnify HTH Limited against any such claims that may arise under this clause.

4.3 During the Development Period the Council and HTH Limited shall use the Liaison Process to review:

- (a) the Management Agreement; and
- (b) the Lease; and
- (c) the plans to be annexed to the Lease

and shall agree such amendments to each document as are strictly necessary to take account of any differences between the envisaged Development and the final design and construction of the Development, subject to HTH Limited obtaining the written consent of ACF on any proposed amendments.

4.4 Subject to all of the Lease pre-conditions defined in clause 4.5 being satisfied on the terms of this Agreement, on or before the Lease Completion Date:

- (a) HTH Limited shall for nil purchase price transfer 14 Brand Street to the Trust on terms set out in Schedule 1 and simultaneously the Council shall grant to HTH Limited and HTH Limited shall accept from the Council the Lease on the terms set out in Schedule 3;
- (b) the Council and HTH Limited shall enter into the Management Agreement;

4.5 The Lease Pre-conditions are:

- (a) that there has been at least one annual advertisement to the beneficiaries of HTH Limited in accordance with clause 10(6) of the Articles of Association of HTH Limited and there has been at least one AGM of HTH Limited following such advertisement;
- (b) HTH Limited has paid £490,000.00 (four hundred and ninety thousand pounds) of the HTH Limited Contribution to the Building Contractor ;
- (c) 14 Brand Street has been transferred to the Trust in accordance with clause 4.4 of this Agreement

4.6 The Collateral Warranties are to be procured by the Council in accordance with clause 5(c) and the Council shall procure delivery to HTH Limited of the Collateral Warranties within ten working days of the Practical Completion Date.

4.7 The Parties remain committed to the exploration of an expanded future scheme that may include the remainder of 15 Brand Street to form this community facility and agree to consider a variation of this Agreement should this be possible within the

funding available at the time and is agreed between the Parties to be viable and achievable.

5. OBLIGATIONS ON THE COUNCIL

5.1 The Council hereby agrees with HTH Limited :

- (a) to insure and keep the Building insured for its full reinstatement value against such of the Insured Risks as are covered by the Council's block insurance policy from the date of this Agreement until the Lease Completion Date
- (b) to use its reasonable endeavours to formally award the contract to the Building Contractor in accordance with the Contract Procurement Rules and the Public Contracts Regulations 2006 before the Effective Longstop Date PROVIDED that the Council shall not be required to make any formal award pursuant to this clause other than to a contractor who has agreed to work within the Acceptable Contractor Terms and whose tender for carrying out the Development does not exceed the Budget
- (c) to procure via the Architect the inclusion by the Building Contractor of the Collateral Warranties within the Budget
- (d) to use its reasonable commercial endeavours to procure via the Building Contract that HTH Limited may have access to the Café not less than 8 weeks prior to the Target Completion Date.
- (e) to use its reasonable endeavours to agree with HTH Limited any amendments to the documentation required in accordance with clause 4.3 before the Lease Completion Date.
- (f) to consult with HTH Limited in accordance with the Liaison Process regarding proposed alterations to the Approved Documents at any time after the commencement of the tender process
- (g) to use its reasonable commercial endeavours in the procurement of the Works (and to instruct the Architect accordingly) to incorporate the HTH Development Requirements in the Works.

6. OBLIGATIONS ON HTH LIMITED

6.1 HTH Limited hereby agrees with the Council :

- (a) to insure and keep 14 Brand Street insured for its full reinstatement value against the Insured Risks and any other risks which the Council reasonably requires from the date of HTH Limited's acquisition thereof until the date on which the Council commences demolition of 14 Brand Street under the licence granted at clause 4.2 of this Agreement.
- (b) not to create any charge or encumbrances over 14 Brand Street from the date of this Agreement until the Transfer Date other than the ACF 14 Brand Street Charge and the fixed charge referred to in Clause 12.2 below.

- (c) to use its reasonable endeavours to agree with the Council any amendments to the documentation required in accordance with clause 4.3 before the Lease Completion Date.
- (d) as soon as reasonably practicable after the date of this Agreement at its own expense to prepare in duplicate and submit to the Council for approval plans and specifications for the Tenant's Works (such approval not to be unreasonably withheld or delayed)
- (e) to pay to the Building Contractor £490,000 (four hundred and ninety thousand pounds) of the HTH Limited Contribution following the issue of the Certificate of Practical Completion and no later than the Lease Completion Date.
- (f) to apply that part of the HTH Limited Contribution not paid to the Building Contractor to the completion of the Tenant's Works and provide the Council with written evidence of such payment.
- (g) not without the consent of the Council to agree to any amendments to the proposed TP1 relating to 14 Brand Street under the provisions of clause 7 of the Option.
- (h) to act reasonably in responding to any consultation from the Council regarding the Council's proposals to make any alteration to the Approved Documents after the commencement of the tender process.
- (i) if HTH Limited fails to pay the part of the HTH Limited Contribution due to the Building Contractor in full when it falls due then HTH Limited shall pay interest in addition to damages for losses incurred by the Council as a result of the delayed payment. The interest will be payable at the Contract Rate on any unpaid amount for the period that the sum falls due to the date of actual payment at the Contract Rate from the due date until the date of actual payment.
- (j) to indemnify the Council against all claims, costs, losses, demands, actions, proceedings and liability arising out of any breach or non-observance of HTH Limited's obligations in this Agreement provided that the Council must give HTH Limited reasonable notice of any claim or demand and no admission of liability, settlement or compromise is to be made without the consent of HTH Limited.

7 COUNCIL'S DECISION MAKING

- 7.1 Any reference to a decision of the Council is a reference to a decision taken by the Council in accordance with the Constitution.
- 7.2 Any reference to a decision of the Trust is a reference to a decision taken by the Trust in accordance with the Constitution.
- 7.3 Notwithstanding any other obligation on the Council under this Agreement the Council may delay the making of any decision in order to obtain the advice and guidance of any Designated Council Officer but shall always use best endeavours to minimise any such delay.

8. DEFAULT AND TERMINATION EVENTS

8.1 This Agreement shall immediately terminate if the Effective Date has not occurred by the Effective Longstop Date.

8.2 The Council may terminate this Agreement immediately by notice in writing to HTH Limited without prejudice to any other rights it may have if at any time before the appointment of the Building Contractor the Council becomes aware that the cost of the Development is to exceed the Budget.

8.3 HTH Limited may terminate the Agreement immediately by notice in writing to the Council without prejudice to any other rights it may have if the Council is in material breach of any of its obligations regarding the Development as set out in Schedule 2 of this Agreement.

8.4 If at any time HTH Limited is in material breach of this Agreement which is not remedied within 56 days (or such longer period as shall be reasonable) after the giving of notice by the Council to HTH Limited (and copies to ACF) requiring the breach to be remedied the Council may serve notice on HTH Limited ending this Agreement with immediate effect BUT SUBJECT to the provisions contained within the ACF Deed of Agreement.

8.5 If this Agreement is terminated pursuant to this clause 8

- (a) the Agreement is terminated with immediate effect except that clause 14 and 15 will remain in full force notwithstanding termination of the Agreement
- (b) neither Party will have any further rights or obligations under the Agreement except that the termination of the Agreement will not affect either of the Party's rights in connection with any breach of this Agreement that occurred before the date of termination.

9. FINANCIAL SUPPORT IN THE EVENT OF COMPLETION AFTER THE TARGET COMPLETION DATE

9.1 Subject to the remaining provisions of this clause, in the event that the Certificate of Practical Completion is not issued by the Target Completion Date and provided that the reason for non issue of the Certificate is not wholly or partly due to the actions or omissions of HTH Limited then the Council shall:

- (a) From the Target Completion Date to the date that the Certificate of Practical Completion is issued, discharge HTH Limited's liability to ACF in respect of:
 - (i) loan interest (which shall be limited to £6,375 per quarter); and
 - (ii) first and subsequent deferred payments of rolled up interest in respect of the loan interest holiday (which shall be limited to £597 per quarter); and
 - (iii) first and subsequent deferred capital loan repayments (which shall be limited to £12,750 per quarter)

In each instance, payment to be made as when the sums become due to ACF

- (b) promptly following the Target Completion Date , pay to HTH Limited a sum in respect of such operational costs as the Council (acting reasonably) deems to have been reasonably and properly incurred by HTH Limited between the Target Completion and the date that the Certificate of Practical Completion is issued.

- 9.2 In respect of any payments to be made by the Council pursuant to Clause 9.1(a), HTH Limited shall produce to the Council such evidence as the Council reasonably requires to be satisfied that the debt is properly due to ACF.

- 9.3 If HTH Limited seeks to recover any sum pursuant to Clause 9.1(b) then it shall submit to the Council a statement setting out the sum claimed together with:
 - (a) a certificate of an independent chartered accountant verifying the calculation and amount thereof; and
 - (b) a statement from HTH Limited confirming what steps (if any) were taken to avoid incurring or otherwise mitigate the said operational costs.

- 9.4 Any sums paid by the Council pursuant to clause 9.1 (a) shall be a debt due from HTH Limited to the Council and subject to clause 9.5 of this Agreement shall be repaid to the Council on the following terms:
 - (a) the debt owed by HTH Limited shall become repayable on 1 April 2026 ;
the amount to be repaid by HTH Limited shall be equal to the gross sum paid by the Council pursuant to 0 (a)
 - (b) HTH Limited shall repay the debt to the Council by equal monthly payments of £3,187.50 commencing on 1 April 2026 until such time as the debt is settled in full
 - (c) if HTH Limited fails to repay any part of the debt it when it falls due then HTH Limited shall pay interest at the Contract Rate on any unpaid amount for the period that the sum falls due to the date of actual payment.

- 9.5 If on or immediately before 1 April 2026 HTH Limited can demonstrate to the Council's reasonable satisfaction that for reasons beyond HTH Limited's control it does not have sufficient surplus funds to make the payment referred to in clause 9.4, then the Council shall defer the first repayment for such period as the Council considers is reasonable to allow HTH Limited to accrue sufficient surplus funds to make the payment.

10. FINANCIAL SUPPORT BETWEEN HTH LIMITED OPERATIONAL DATE AND TARGET COMPLETION DATE

- 10.1 Subject to the remaining provisions of this clause, in the event that the HTH Limited Operational Date is not achieved and provided that the reason for this is not wholly or partly due to the actions or omissions of HTH Limited, then the Council shall:

In respect of the period between the HTH Operational Date and Target Completion Date only, discharge HTH Limited's liability to ACF in respect of:

- (i) loan interest and
- (ii) first and subsequent deferred payments of rolled up interest in respect of the loan interest holiday and
- (iii) first and subsequent deferred capital loan repayments ;

In each instance, payment to be made as when the sums become due to ACF

10.2 In respect of any payments to be made by the Council pursuant to Clause 10.1 above, HTH Limited shall produce to the Council such evidence as the Council reasonably requires to be satisfied that the debt is properly due to ACF.

10.3. Any sums paid by the Council pursuant to clause 10.1, shall be a debt due from HTH Limited to the Council and subject to Clause 10.4 of this Agreement shall be repaid to the Council on the following terms:

- (a) the debt owed by HTH Limited shall become repayable on 1 April 2026;
- (b) the amount to be repaid by HTH Limited shall be equal to the gross sum paid by the Council pursuant to 10.1
- (c) HTH Limited shall repay the debt to the Council by equal monthly payments not exceeding £ 3187.50 commencing on 1 April 2026 until such time as the debt is settled in full
- (d) if HTH Limited fails to repay any part of the debt it when it falls due then HTH Limited shall pay interest at the Contract Rate on any unpaid amount for the period that the sum falls due to the date of actual payment.

10.4 If on or immediately before 1 April 2026 HTH Limited can demonstrate to the Council's reasonable satisfaction that for reasons beyond HTH Limited's control it does not have sufficient surplus funds to make the payment referred to in clause 10.3 above, then the Council shall defer the first repayment for such period as the Council considers is reasonable to allow HTH Limited to accrue sufficient surplus funds to make the payment.

11 Council's Put Option

11.1 The Put Option

11.1.1 In consideration of HTH Limited entering into this Agreement, the Council grants the Put Option to HTH Limited.

11.1.2 The Put Option confers the right on HTH Limited at any time during the Put Option Period, but only following the occurrence of a Trigger Event, to require the Council to buy 14 Brand Street from HTH Limited on the terms of this clause.

11.1.3 The Put Option may only be exercised after HTH Limited has purchased 14 Brand Street pursuant to the Option.

11.2 Exercise of the Option

11.2.1 The Put Option may be exercised by HTH Limited or HTH Limited's Solicitor by serving an Option Notice in writing on the Council.

11.2.2 The Option Notice is to be substantially in the form set out in Schedule 4.

11.2.3 Upon receipt of an Option Notice the Council is to sign and return a copy of it to HTH Limited or HTH Limited's Solicitor within five working days of its receipt but the absence of the receiving party's signature to the Option Notice will not invalidate the Option Notice.

11.2.4 The Council grants HTH Limited an irrevocable power of attorney for the sole purpose of countersigning any Option Notice served by or on behalf of the Council.

11.2.5 On the exercise of the Put Option, HTH Limited and the Council will become bound to one another to complete the sale and purchase of the 14 Brand Street on the terms of this Agreement.

11.3 Service of Option Notice

11.3.1 An Option Notice to be served on the Council is to be delivered by hand or sent by first class post, pre-paid or recorded delivery to the address of the Council set out in this Agreement or to such other address which the Council may notify to HTH Limited at any time as its address for service.

11.3.2 If an Option Notice is received after 4.00 pm on a working day, or on a day which is not a working day, it is to be treated as having been received on the next working day.

11.3.3 Unless the time of actual receipt is proved, an Option Notice sent by the following means is to be treated as having been received:

11.3.3.1 if delivered by hand, at the time of delivery;

11.3.3.2 if sent by post, on the second working day after posting.

11.4 Completion

11.4.1 The sale and purchase of 14 Brand Street is to take place on the Put Option Completion Date.

11.4.2 The Council will pay the Purchase Price to HTH Limited or to HTH Limited's Solicitor on the Put Option Completion Date.

11.4.3 On or before the Put Option Completion Date the Council and HTH Limited will execute the Put Option Transfer in duplicate.

12 ALIENATION

- 12.1 HTH Limited may not assign, charge or part with its interest in this Agreement or any part of it nor agree to do save as expressly provided by this Agreement.
- 12.2 HTH Limited may assign and/or charge the benefit of this Agreement by way of fixed charge to ACF on terms previously approved in writing by the Council (such approval not to be unreasonably withheld or delayed) subject to the terms of the ACF Deed of Agreement.

13. ACTIONS AND PROCEEDINGS

- 13.1 The Council shall at its own expense diligently pursue any actions or proceedings that are reasonably required to achieve completion of the Development against the Building Contractor or a member of the Professional Team in order to enforce the performance of their respective obligations.
- 13.2 The Council shall take account of any requests or proposals made by HTH Limited in relation to the commencement or conduct of any such actions or proceedings.

14 DISPUTES

- 14.1 The Parties shall use reasonable endeavours to resolve any Dispute arising in relation to this Agreement without serving a Dispute Notice.
- 14.2 Either Party shall be entitled to serve a Dispute Notice in relation to any Dispute.
- 14.3 If the Parties do not agree upon the type of Specialist or the identity of the Specialist the question may be referred by either party to the president of the Royal Institution of Chartered Surveyors or his deputy who shall determine the question and/or nominate an appropriate Specialist.
- 14.4 Unless the Parties otherwise agree the reference to a Specialist shall be made to him as an arbitrator under the Arbitration Act 1996 but if the parties agree to the Specialist acting as an expert his decisions shall (save in the case of manifest error) be final and binding upon the parties.
- 14.5 The liability for paying all costs of referring a Dispute to a Specialist including costs connected with the appointment of the Specialist shall be decided by the Specialist.
- 14.6 If the Specialist should die or become unwilling to act or incapable of acting or it becomes apparent that for any reason he will be unable to determine the matter

referred to him within a reasonable time after his appointment his appointment shall be terminated and either the Council or HTH Limited shall be entitled to apply for another specialist to be appointed.

- 14.7 As between the Council and HTH Limited the Certificate of Practical Completion shall (save in the case of manifest error) be final and binding and shall not be referred to a Specialist.

15 FREEDOM OF INFORMATION

- 15.1 The Parties shall fully co-operate with and assist each other in complying with their respective obligations under the Freedom of Information Act 2000 (the "FOI").

(a) Where a Party receives a request for information pursuant to the provisions of the FOI (a "Request for Information") in relation to information which it is holding on behalf of the other Party, it shall:

- (i) transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within 2 Working Days after receipt of the Request for Information;
- (ii) provide the other Party with a copy of all information in its possession or power in the form that the other Party requires within 5 Working Days after receipt of the Request for Information; and
- (iii) provide all necessary assistance as reasonably requested by the other Party to respond to a Request for Information within the time for compliance set out in section 10 of the FOI.

(b) Where any Party receives a Request for Information which relates to this Agreement (the "Receiving Party") it shall inform the other Party about the Request for Information as soon as practicable after receipt (and in any event within 2 Working Days after receiving such Request for Information) and the following provisions shall apply:

- (i) where the other Party is holding information on behalf of the Receiving Party that relates to the Request for Information, a copy of such information in its possession or power shall be provided to the Receiving Party in the form specified by the Receiving Party within 8 Working Days after receiving a copy of the Request for Information;
- (ii) if the other Party having taken account of any relevant guidance available from the Information Commissioner's website reasonably believes that any information subject to a Request for Information is exempt from the provisions for the FOI ("Exempt Information") it shall be entitled to notify the Receiving Party accordingly and, in the event that it does so, shall specify in such notification the reasons why it considers such information to be Exempt Information; and

- (iii) the Receiving Party shall (acting reasonably and in good faith) consider the reasons set out in any notification submitted pursuant to clause 10(b)(ii) and following such consideration the Receiving Party shall either:
 - (iv) withdraw its requirement for information to be provided pursuant to clause 10(b)(i); or
 - (v) confirm its request, in which case both Parties shall provide the information so requested within the time period set out in clause 10(b)(i)
- (c) The Receiving Party shall be responsible for determining at its absolute discretion (taking into account any notifications submitted pursuant to clause 10(b)(ii) whether the information:
 - (i) is Exempt Information; or
 - (ii) is to be disclosed in response to a Request for Information.
- (d) If the Receiving Party determines that information (including confidential information) must be disclosed pursuant to a Request for Information, it shall notify the other Party of that decision at least 2 Working Days before disclosure.
- (e) Any notification given under clause 10(b)(ii) shall be given within 5 Working Days after the date on which it receives the request from the Receiving Party.
- (f) In the event that any Party fails to submit a notification in accordance with clause 10(b)(ii) or fails to notify the Receiving Party by the date specified in clause 10(e) the Party failing to submit any notification shall be deemed to have concluded that the information requested is not Exempt Information and accordingly shall, where applicable, supply such information in accordance with clause 10(b)(i)

15.2 The Parties' obligations in this clause 15 shall be without prejudice to any other rights of the other Party under this Agreement or at law and shall continue after the expiry or early determination of this Agreement without limit in point of time.

16. LIAISON ARRANGEMENTS

16.1 The Council will project manage the Development in accordance with the diagram appearing at Annex 5 to ensure HTH Limited has appropriate input into the management of the Development.

16.2 Where any matter in this Agreement falls to be determined by the Liaison Process then:

- (a) if the matter relates to negotiation or renegotiation of any of the documents

annexed to this Agreement, it shall be referred to the negotiating team detailed in Annex 5;

- (b) if the matter relates to design and construction of the Development, it shall be referred to the design and construction project team detailed in Annex 5;
and
- (c) if the matter relates to operational matters that will take effect after completion of the Development, it shall be referred to the operational project team detailed in Annex 5.

17 ENTIRE AGREEMENT

- 17.1 This Agreement and the documents annexed to it constitute the entire agreement and understanding of the parties and supersede any previous agreement between them relating to the subject matter of this Agreement.
- 17.2 Each Party acknowledges and agrees that in entering into this Agreement, it does not rely on and will have no remedy in respect of any statement, representation, warranty, collateral agreement or other assurance (whether made negligently or innocently) of any person (whether party to this Agreement or not) other than:
- (a) as expressly set out in this Agreement or the documents annexed to it; or
 - (b) in any written replies which the other Party's solicitor has given to any written enquiries raised before the date of this Agreement.

Nothing in this clause will, however, operate to limit or exclude any liability for fraud.

18 COSTS

- 18.1 Subject to the remainder of this clause, each Party shall be responsible for its own legal costs and other professional costs and disbursements in relation to the preparation, execution and completion of this Agreement, the Transfer, the Management Agreement and the Lease
- 18.2 If the Council terminates this Agreement pursuant to clause 8.2 of this Agreement then the Council shall reimburse or pay to HTH Limited all legal and other professional costs and disbursements properly and reasonably incurred (together with any irrecoverable VAT) in relation to:
- (a) HTH Limited's Solicitor's fees in respect of the preparation, execution and completion of this Agreement, the Transfer, the Management Agreement and the Lease, or other legal advice relating to or arising out of this Agreement (which shall be limited to £20,000 exclusive of VAT)

- (b) ACF's legal costs in respect of the preparation, execution and completion of the security documentation relating to HTH Limited Contribution (which shall be limited to £15,000 exclusive of VAT)
- (c) third party fees in respect of the preparation, execution and completion of the Option (which shall be limited to £5,000 exclusive of VAT)

19 NOTICES

19.1 Any notice required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to the party required to receive the notice at its address as set out below:

- (a) Council: The Corporate Legal Manager, Council Offices, Gernon Road, Letchworth, Hertfordshire SG6 3JF
- (b) HTH Limited: Mr David Leal-Bennett, c/o Bradshaw Johnson LLP, 2 Croft Chambers, 11 Bancroft, Hitchin, Hertfordshire SG5 1JQ

or as otherwise specified by the relevant party by notice in writing to the other party.

19.2 Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
- (b) if sent by pre-paid first class recorded delivery, at 9.00 am on the second Working Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

19.3 A notice required to be given under this Agreement shall not be validly given if sent by e-mail.

19.4 The provisions of this clause 19 shall not apply to the service of any proceedings or other documents in any legal action.

20. VALUE ADDED TAX

All sums due payable under this Agreement for the supply of goods and services are exclusive of any VAT arising in respect of them and a sum equal to such VAT shall be payable in addition.

21. NO PARTNERSHIP

Nothing in this Agreement is intended to, or shall be deemed to, establish any legal partnership or joint venture between the Council and HTH Limited.

22. THIRD PARTY RIGHTS

A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

23. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

24. TRUST LAND

24.1 The Parties acknowledge that:

- (a) the Trust Property is held by the Council as trustee of the Trust in accordance with the terms of the Trust
- (b) the liability of the Council under this Agreement or otherwise in respect of the Trust is limited to the assets of the Trust from time to time.

25. TUPE

The Council warrants to HTH Limited that on the Lease Completion Date there shall be no employees of the Council that will transfer to HTH Limited under the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 as a result of the terms of this Agreement.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 Transfer of 14 Brand Street

1. CONDITIONS

- 1.1. The Part 1 Conditions are incorporated in this schedule so far as they:
 - (a) apply to a sale by private treaty;
 - (b) are not inconsistent with the other clauses in this Schedule; and
 - (c) have not been modified or excluded by any of the other clauses in this Schedule
- 1.2. The Part 2 Conditions are not incorporated into this schedule.
- 1.3. In interpreting the Conditions HTH Limited shall be the Seller, the Trust shall be the Buyer and 14 Brand Street shall be the Property.
- 1.4. Condition 1.1.4(a) does not apply to this schedule.
- 1.5. Condition 1.1.1(e) is amended so that reference to the contract rate in Condition 1.1.1(e) refers to the Contract Rate as defined in this Agreement.

2. VACANT POSSESSION

HTH Limited will transfer 14 Brand Street to the Trust with vacant possession upon completion

3. TITLE GUARANTEE

HTH Limited will transfer 14 Brand Street to the Trust with full title guarantee

4. MATTERS AFFECTING THE PROPERTY

- 4.1. HTH will transfer 14 Brand Street to the Trust free from the ACF 14 Brand Street Legal Charge and free from encumbrances other than
 - (a) any matters, (other than the ACF 14 Brand Street Charge) contained or referred to in the entries or records made in registers maintained by [HM Land Registry as at 10 October 2012 Timed 13:14:31 under title number HD 512543;

- (b) any matters which HTH Limited does not and could not reasonably know about;
- (c) any matters, (other than the ACF 14 Brand Street Charge) disclosed or which would have been disclosed by the searches and enquiries which a prudent buyer would have made before entering into this contract;
- (d) public requirements;

4.2. Conditions 3.1.1, 3.1.2, 3.1.3 and 3.3 do not apply to this schedule.

5. TRANSFER

The transfer to the Trust will be:

- a) in the agreed form TR1 initialled by the parties and annexed to this Agreement at Annex 1 Part 1; and
- b) subject to the acquisition of 14 Brand Street by HTH Limited in the agreed form TP1 initialled by the parties and annexed to this Agreement at Annex 1 Part 2 with such modifications (if any) as are agreed between HTH Limited and the Trust

Schedule 2 The Development

1. APPROVED DOCUMENTS

The Council may at any time make any variation (being an addition, alteration or removal of detail) to the Approved Documents provided that:

- (a) the variations are in accordance with the Planning Permissions, the Requisite Consents and any statutory requirements;
- (b) the area of the Hall and the areas over which rights are to be enjoyed pursuant to the Lease are not increased or decreased by more than 2% of the gross square meterage shown on the Approved Documents and the circulatory areas as shown thereon are not altered or omitted;
- (c) the Council notifies HTH Limited of the variations within 10 Working Days thereof and provides two sets of the relevant Approved Documents as revised from time to time
- (d) the Development when built in accordance with the variation will still meet the HTH Limited Development Requirements

2. REQUISITE CONSENTS

- 2.1. Whenever appropriate, the Council, the Architect or any member of the Professional Team shall expeditiously apply for and use reasonable endeavours to obtain the Requisite Consents.
- 2.2. The Council shall keep HTH Limited informed as to progress in obtaining the Requisite Consents and shall promptly supply copies of any that are obtained to HTH Limited.
- 2.3. The Council may at its discretion appeal against the refusal of any Requisite Consent, seek a declaration that a Requisite Consent is being unreasonably withheld or delayed or take such other steps in order to carry on with the Development.
- 2.4. If it is desirable or necessary to obtain the grant of any easement or right for the benefit of the New Site from any third party:
 - (a) for the carrying out of the Development; or

- (b) for the use and enjoyment of the New Site as contemplated by the terms of the Planning Permission,

the Council shall negotiate with the third party for its grant. If necessary HTH Limited shall at the expense of the Council enter into any requisite deed or agreement with the relevant third party subject to the Council, HTH Limited and ACF approving its terms, such consents not to be unreasonably withheld or delayed.

3. PROFESSIONAL TEAM

The Council shall once such of the Requisite Consents have been obtained so as to enable the Works to commence appoint such members of the Professional Team as are required to carry out the Development PROVIDED that the Council may in its absolute discretion appoint the Professional Team before the relevant Requisite Consents have been obtained.

4. DEVELOPMENT AND BUILDING CONTRACT

4.1 The Council shall once such of the Requisite Consents have been obtained so as to enable the Works to commence and the Building Contract has been awarded, begin the Development.

4.2 The Council shall forthwith after completion of the Building Contract provide a certified copy thereof to HTH Limited.

5. DEVELOPMENT OBLIGATIONS

5.1. The Council shall use its reasonable endeavours to procure the carrying out of and completion of the Development on or before the Target Completion Date.

5.2. The Council shall use its reasonable endeavours to procure that the Development is carried out:

- (a) diligently, in a good and workmanlike manner and in accordance with good building practice;
- (b) using only good quality materials and well-maintained plant;
- (c) in accordance with this Agreement, the Approved Documents, the Planning Permission and the Requisite Consents;
- (d) in accordance with all statutory or other legal requirements and the recommendations or requirements of the local authority or statutory undertakings;
- (e) in compliance with all relevant British Standards, codes of practices and good building practice;

- (f) by selecting and using materials so as to avoid hazards to the health and safety of any person and to ensure the long term integrity of the Development;
- (g) in accordance with all covenants, stipulations, rights and conditions affecting the New Site; and
- (h) so that on the Practical Completion Date the Development shall be fit for its intended purpose as contemplated by the Planning Permission.

6. TENANTS WORKS

- 6.1. Following approval by the Council of HTH Limited's proposals for the Tenant's Works submitted in accordance with clause 6.1(d) of the Agreement, the Council shall advise HTH Limited of the arrangements for access to the Building to enable the Tenant's Works to be completed.
- 6.2. HTH Limited shall as soon as reasonably practicable after access has been afforded for entry on the Building at its own expense commence and carry out the Tenant's Works and shall complete the Tenant's Works within 8 weeks from the date that access was so afforded.
- 6.3. HTH Limited shall not start the Tenant's Works until it has:
- (a) obtained all licences and consents that are required for the Tenant's Works under all laws and by the owner or occupier of any neighbouring land or otherwise and has produced the same to the Council.
 - (b) provided details of the Tenant's Works to the insurers of the Building and obtained their consent to carrying out the Tenant's Works.
 - (c) notified the Council and the insurers of the Building of the date it intends to start carrying out the Tenant's Works.
- 6.4. HTH Limited shall carry out the Tenant's Works:
- (a) in a good and workmanlike manner and in accordance with good building practice; and
 - (b) with good and suitable materials; and
 - (c) in compliance with all statutes and statutory orders and regulations made under or deriving validity from them, and codes of practice of local authorities, and competent authorities affecting the Tenant's Works and/or the Building; and
 - (d) with due diligence; and
 - (e) to the reasonable satisfaction of the Council
- 6.5. If the Tenant's Works are commenced before the Certificate of Practical Completion is issued, HTH Limited shall not cause any obstruction or interference with the Development, and will comply with the reasonable requirements of the Architect as to the method of and programme for carrying out the Tenant's Works.

- 6.6. In carrying out the Tenant's Works HTH Limited must comply with all laws and the terms of all other licences and consents, the requirements and recommendations of all relevant utility suppliers and those of the insurers of the Building
- 6.7. HTH Limited must immediately make good, to the reasonable satisfaction of the Council, any damage (including decorative damage) to any land or building or any plant and machinery which is caused by carrying out the Tenant's Works.
- 6.8. HTH Limited shall liaise with the CDM Coordinator in respect of the Tenant's Works and shall carry out the Tenant's Works in accordance with the CDM Regulations.
- 6.9. The tenant covenants in the Lease will extend to the Tenant's Works and apply to the property demised by the Lease as altered by those works.

7. THE CDM REGULATIONS

- 7.1. The Council elects to be treated for the purposes of the CDM Regulations as the only Client for the purpose of the Development (but for the avoidance of doubt not in relation to the Tenant's Works). HTH Limited agrees with such election by the Council.
- 7.2. The Council shall use its reasonable endeavours to ensure that the CDM Co-ordinator and Building Contractor each comply with their respective obligations under the CDM Regulations, including as to the provision of two sets of "as built" drawings and specifications for incorporation in the health and safety file to be maintained by HTH Limited.
- 7.3. The Council shall ensure that the CDM Co-ordinator and Building Contractor are both promptly:
 - (a) supplied with all relevant information required under the CDM Regulations; and
 - (b) notified of any changes relating to the Development which may have any effect on their responsibilities or duties under the CDM Regulations.

8. INSPECTION

HTH Limited may enter the New Site at any time during the Development Period, upon reasonable notice to the Council and the Building Contractor, to inspect progress of the Works and the materials used. In entering the New Site, HTH Limited shall not obstruct progress of the Works and shall:

- (a) not give any instructions or make any representations directly to the Building Contractor or Professional Team; and

- (b) comply with the Council and Building Contractor's health and safety and site rules but HTH Limited shall be entitled to make representations to the Council in accordance with the Liaison Process.

9. INSURANCE

- 9.1. From the Development Commencement Date the Council shall insure, or shall procure that the Building Contractor insures, the Works, the Development and all plant and unfixed materials and goods delivered to or placed on or adjacent to the New Site and intended for incorporation in the Works against all perils resulting in loss or damage thereto on customary contractor's all risks terms.
- 9.2. In the event of any loss or damage to the Works the Council shall procure that their reinstatement or replacement is carried out diligently and with all reasonable speed. The Council shall apply the proceeds of the insurance towards such reinstatement or replacement and shall make good any deficiency out of its own funds.
- 9.3. The Council and HTH Limited mutually agree not knowingly to do or permit anything to be done that may render any insurance policy void or voidable.
- 9.4. On written request by HTH Limited (but not more frequently than once in any calendar year) the Council shall provide (or procure the provision) to HTH Limited a copy of the Policy or summary thereof effecting cover in accordance with the provisions of sub-clause 9.1 above together with confirmation of the renewal of cover.

10. PRACTICAL COMPLETION

- 10.1. The Council shall procure that:
 - (a) the Architect gives at least 10 Working Days notice to HTH Limited of its intention to inspect the Development for the purposes of issuing the Certificate of Practical Completion. HTH Limited may attend the inspection and make representations to the Council; and
 - (b) without fettering the discretion of the Architect in carrying out its duties under the Building Contract, the Architect takes proper consideration of any representations that are made when considering whether to issue the Certificate of Practical Completion in accordance with the terms of the Building Contract.
- 10.2. The Council shall ensure that the Architect gives a copy of the Certificate of Practical Completion to HTH Limited as soon as reasonably practical after its issue, together with a copy of any accompanying snagging list.

10.3. The issue of the Certificate of Practical Completion shall be conclusive evidence binding on the parties that the Works have been completed in accordance with the terms of this Agreement.

11. DEFECTS LIABILITY

11.1. During the Defects Liability Period the Council accompanied by a representative of HTH Limited shall inspect or procure such inspections of the Works as are reasonably necessary or appropriate to identify any defects, shrinkages or other faults in the Works.

11.2. The Council shall prepare a list of all defects, shrinkages or other faults in the Works (incorporating any defects, shrinkages or other faults in the Works notified to it by HTH Limited) and give it to the Building Contractor within the time limits specified by the Building Contract.

11.3. The Council shall ensure that the Building Contractor's obligations to remedy defects, shrinkages or other faults in the Works during the Defects Liability Period are enforced and that all such defects, shrinkages or other faults in the Works are remedied promptly in accordance with the Building Contract.

Schedule 3 – The Lease

1 CONDITIONS

- 1.1 The Part 1 Conditions are incorporated in this Schedule, in so far as they:
- (a) are applicable to the grant of a lease;
 - (b) are not inconsistent with the other clauses in this Agreement; and
 - (c) have not been modified or excluded by any of the other clauses in this Agreement.
- 1.2 The Part 2 Conditions are not incorporated in this Schedule.
- 1.3 In interpreting the Conditions the Council shall be the Seller, HTH Limited shall be the Buyer and the Hall shall be the Property.
- 1.4 Condition 9.1.1 is varied to read "If any plan or statement in the contract or in written replies which the seller's conveyancer has given to any written enquiries raised by the buyer's conveyancer before the date of this contract, is or was misleading or inaccurate due to any error or omission, the remedies available are as follows."
- 1.5 The following Part 1 Conditions do not apply to this Agreement:
- (a) Conditions 1.1.4(a), 1.2, 1.3, 1.4 and 1.5;
 - (b) Condition 2.2;
 - (c) Conditions 3.1.1, 3.1.2, 3.1.3 and 3.3;
 - (d) Conditions 6.1, 6.2, 6.3, 6.4.2 and 6.6.2;
 - (e) Conditions 7.1.2, 7.1.3 and 7.1.4(b);
 - (f) Condition 9.3; and
 - (g) Conditions 10.2.4 and 10.3.

2 CONDITION OF THE HALL

- 2.1 No representation or warranty is given by the Council that the Hall may lawfully be used for the uses permitted by the Lease and HTH Limited confirms that it has made all necessary enquiries to satisfy itself on this point.

2.2 HTH Limited will not be entitled to refuse to complete or to delay completion of the grant of the Lease due to any event occurring after the Practical Completion Date that results in:

- (a) any damage to the Hall or any part of it; or
- (b) any damage to the means of access to the Hall; or
- (c) any deterioration in the Hall's condition.

3 VACANT POSSESSION

3.1 The Council will give HTH Limited vacant possession of the Hall on completion of the grant of the Lease.

3.2 HTH Limited is not entitled to and will not be permitted to take occupation or possession of the Hall or of any part of it prior to completion of the grant of the Lease and this Agreement does not operate as a demise.

4 DEDUCING TITLE

4.1 The Council's freehold title to the Building including the Trust Property has been deduced to HTH Limited's Solicitor before the date of this Agreement.

4.2 HTH Limited is deemed to have full knowledge of the Council's title and is not entitled to raise any enquiry, objection, requisition or claim in relation to it.

5 MATTERS AFFECTING THE PROPERTY

5.1 The Council will grant the Lease to HTH Limited free from encumbrances other than:

- (a) any matters, other than financial charges, contained or referred to in the entries or records made in registers maintained by the Land Registry as at 10 October 2012 13:13:34, 10 October 2012 13:14:31, 10 October 2012 13:11:17 under title numbers HD 488762, HD 506432 and HD 512543 respectively;
- (b) all matters contained or referred to in the Lease;
- (c) any matters discoverable by inspection of the New Site in so far as it effects the Hall before the date of this Agreement;
- (d) any matters which the Council does not and could not reasonably know about;
- (e) any matters, other than financial charges, disclosed or which would have been disclosed by the searches and enquiries that a prudent tenant would have made before entering into this Agreement;
- (f) public requirements;

(g) any matters which are , unregistered interests which override first registration under Schedule 1 to the Land Registration Act 2002 and or unregistered interests which override registered dispositions under Schedule 3 to the Land Registration Act 2002; and

5.2 HTH Limited is deemed to have full knowledge of the matters referred to in clause 5.1 and will not raise any enquiry, objection, requisition or claim in respect of any of them.

6 COMPLETION

6.1 On or before the issue of the Certificate of Practical Completion the Council shall engross the Lease and a Counterpart thereof for execution by the parties.

6.2 Completion will take place on the Lease Completion Date.

7 ASSIGNMENT

HTH Limited cannot require the Council to grant the Lease to any person other than the HTH Limited but such restriction shall be without prejudice to the rights of ACF for such time as it is chargee of this Agreement.

Schedule 4 – Put Option Notice

To: North Hertfordshire District Council

Dated: []

Development Agreement (“the **Agreement**”) dated [] made between (1) North Hertfordshire District Council (“the **Council**”) and (2) Hitchin Town Hall Limited (“**HTH Limited**”)

We refer to the Agreement.

We hereby give you notice that, pursuant to Clause 11 of the Agreement, we HTH Limited, exercise the Put Option granted by Clause 11 of the Agreement in respect of the 14 Brand Street (as defined in the Agreement).

We confirm that the terms of the Agreement shall be deemed to be incorporated in this document and that a contract shall be made pursuant to the Agreement when the Council sign the attached duplicate of this notice and return it to ourselves or when the notice is counter-signed by ourselves in default of the Council signing it (pursuant to Clause 11.2.4 of the Agreement).

In accordance with the terms of the Agreement, you should sign and date the attached duplicate of this notice and return it to the address given below where our solicitors will receive it on our behalf.

Signed by

Print Name

Authorised signatory for and on behalf of the **HTH Limited**

(i)

(ii) **OR**

Signed by

Print Name

HTH Limited's Solicitors

Address.....

We, the Council, acknowledge receipt of this Option Notice and confirm the agreement to buy the Property in accordance with the terms of the Agreement.

Signed by

Print Name

Authorised signatory for and on behalf of the Council

Computer Disc of Approved Documents

Executed by affixing the common seal of **NORTH HERTFORDSHIRE DISTRICT COUNCIL** in the presence of:

.....
Authorised Signatory

Signed as a deed by **HITCHIN TOWN HALL LIMITED** acting by two Directors

.....
Director

.....
Director