

DATED [●]

PENWITH DISTRICT COUNCIL

CORNWALL COUNTY COUNCIL

ING RED UK (HAYLE HARBOUR) LIMITED

Draft

[19 March 2009]

**AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT
1990 (AS AMENDED)**

relating to Hayle Harbour, Hayle, Cornwall

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DATED [●]

PARTIES

- (1) **PENWITH DISTRICT COUNCIL**, of [] (the “**District Council**”)
- (2) **CORNWALL COUNTY COUNCIL**, of [] (the “**County Council**”)
- (3) **ING RED UK (HAYLE HARBOUR) LIMITED**, a [company][corporation] incorporated in [●] [with registered number [●]] whose registered office is at [●] (the “**Developer**”)

BACKGROUND

- (A) The Developer is the freehold owner of the Site and has applied for planning permission for the Development to the District Council
- (B) The District Council is a local planning authority (for the purposes of the 1990 Act) for the Council’s Area in which the Site is situated and has resolved to grant planning permission for the Development subject to the Developer entering into the planning obligations contained in this Agreement
- (C) The County Council is a local planning authority (for the purposes of the Act) for the area in which the Site is situated and is also the local highway authority pursuant to the Highways Act 1980 for the County of Cornwall
- (D) The District Council and the County Council are satisfied that the planning obligations entered into by the Developer pursuant to this Agreement are necessary for the implementation and use of the Development

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“**1990 Act**” means the Town and Country Planning Act 1990 (as amended).

“Account” means a designated interest-bearing account with a registered bank or deposit holder in the name of the County Council and all such interest is to be credited to the Account.

“Affordable Housing” means residential accommodation to meet the needs of households whose incomes are not sufficient to allow them to access decent and appropriate market housing in the district of Penwith and who have appropriate local connections and shall include all types of tenure from time to time contemplated by policy including social renting, intermediate renting, shared ownership of the equity, My Choice Home Buy, New Build Home Buy and units discounted for sale.

“Affordable Housing Development Agreement” means an agreement for the construction and Disposal of the Affordable Housing Units on terms and to a specification agreed with Affordable Housing Provider and made between the Developer and the Affordable Housing Provider.

“Affordable Housing Units” means those units of residential floorspace within the Development which shall be provided as Affordable Housing in accordance with Clause [5] and Schedule 1.

“Affordable Housing Provider” means any company or organisation approved by the District Council pursuant to [●] for the purpose of providing Affordable Housing at the Development provided that an Approved RSL shall be deemed to be an Approved Affordable Housing Provider for the purposes of [●].

“Application” means the application for outline planning permission in respect of the Development submitted to the District Council on [●] and given reference number [●].

“Approved RSL” means a Registered Social Landlord generally approved by the District Council in relation to the provision of affordable housing.

“Business Centre” means a building(s) or part(s) of a building(s) with total maximum area of 4,000 square metres which is developed within Use Class B1 to provide a range of small business spaces supported by suitable centralised support facilities within a managed environment and which is referred to in Clause 16

“CEMP” means the Construction Environmental Management Plan to be submitted by the Developer to the County Council for each Development Area of the Development and in accordance with Clause [11.15]

“Churchtown Road Junction” means the junction of Churchtown Road with the proposed North Quay access road the location of which is shown on Plan []

“Cockle Bank” means the existing sand bank forming part of the harbour within the Site as shown [] on Plan []

“Commencement of the Development” is the carrying out of a material operation as defined in section 56(4) of the 1990 Act save that for the avoidance of doubt the carrying out of the following shall not constitute a material operation and shall not (individually or collectively) amount to commencement of the Development:

- (a) ground investigation and site survey;
- (b) temporary fence and hoarding;
- (c) archaeological investigations;
- (d) environmental investigations;
- (e) decontamination and remediation;
- (f) site preparation;
- (g) site clearance including demolition of existing buildings and structures;
- (h) the laying of sewers and services including diversion of existing services;
- (i) the undertaking of any works pursuant to the Detailed Planning Permission
- (j) maintenance dredging works within the harbour

and **“Commence or Commenced”** in relation to the Development shall be construed accordingly.

“Commencement Date” means the date of Commencement of the Development or (as the case may be) the part of the Development in connection with which the expression is used.

“Condition” means a condition imposed on the Planning Permission.

“Council’s Area” means the District Council’s administrative area.

“Councils” means both the District Council and the County Council

“Detailed Planning Permission” means planning permission granted by the District Council or the Secretary of State for Communities and Local Government pursuant the planning application made on behalf of Camborne Pool Redruth Regeneration Limited and Hayle Harbour Management Limited on [date] and bearing reference []

“Developer’s Section 278 Notice” means a notice served by the Developer on the County Council and the Highways Agency stating that the Developer wishes to enter into the agreement referred to at Clause [7.2].

“Development” means the [insert outline planning application description].

“Development Area (s)” means the Development Area (s) as determined in accordance with Condition [●] of the Planning Permission.

“Development Area Energy Strategy” means the strategy to minimise carbon emissions from the Development to be submitted by the Developer in accordance with Clause [13]

“Development Area Travel Plan” means a sustainable travel plan including a programme for implementation submitted in accordance with Clause [9.1.2] the objective of which is to reduce car movements on and off the Site and which shall include the measures identified in the Transport Strategy, and in particular:-

- (A) The identification of targets for trip reduction and modal shift
- (b) The methods to be employed to meet these targets
- (c) The mechanisms for monitoring and review, to include an annual review commencing 3 months after first Occupation subject to the agreed timescale or timetable for monitoring within each Development Area Travel Plan
- (d) The mechanisms for reporting
- (e) The remedial strategy to be applied in the event that targets are not met
- (f) The mechanisms for mitigation if the thresholds are breached
- (g) Implementation of the Development Area Travel Plan to an agreed timescale or timetable and its operation thereafter

(h) Mechanisms to secure variations to the Development Area Travel Plan following monitoring and reviews

“**Disposed**” means (unless specified otherwise) transfer of the freehold interest or the grant of a lease for a minimum period of 125 years commencing on the date of the grant of the lease and “**Disposal**” shall be construed accordingly.

“**Dispute Resolution Procedure**” means the procedure set out in Schedule 3

“**Drawing**” means [list highway drawings]

“**Dune Area**” means the area shown edged [] on Plan 1

“**Dwellings**” means the residential units to be provided pursuant to the Development and includes the Affordable Housing Units and “**Dwelling**” shall be construed accordingly.

“**EMP**” means the Ecological Management Plan to be submitted in accordance with Clause [11.15].

“**Environmental Consultees**” means representatives or consultants appointed by Natural England and the Environment Agency and the Royal Society for the Preservation of Birds (or their statutory successors).

“**Expert**” has the meaning assigned in Schedule 3.

“**Foundry Car Park**” means the area shown [] on Plan []

“**Foundry Junction**” means the junction of the B3301 with the B3302 in Hayle the location of which is indicated on Plan []

“**Harvey Towans Car Park**” means the existing car park [and surrounding land] shown edged [●] on Plan [●].

“**Hayle Harbour Development Framework and Design Codes**” means the document appended to this Agreement so titled and dated []

“**Hayle Town**” means the area shown edged [] on Plan []

“**Hilltop**” means that area of the Site shown edged [●] on Plan [●].

“**Indexation**” means []

“Loggans Moor Improvements” means the signalisation and associated highway works to the Loggans Moor A30 roundabout as shown on Drawing [No.].

“Loggans Moor Sum” means the estimated costs of the Loggans Moor Improvements as proposed by the Developer and agreed by the County Council in accordance with Clause [7.5].

“Marina” means the marina proposed as part of the Development and referred to in the Planning Application.

“Market Housing Units” means those Dwellings to be made available for sale or leased on the open market and excludes the Affordable Housing Units and **“Market Housing Unit”** shall be construed accordingly.

“Monitoring, Performance and Mitigation Strategy” means a strategy for the monitoring, performance and mitigation of the impact of the Development on transport infrastructure within Hayle Town and the surrounding area together with a programme for implementation and which will address in particular the performance of the strategic road network dealing with downstream constraints associated with the local road networks including the B3301 Carwin Rise inbound into Hayle and will include details of the setting up and operation of a review and management board and performance criteria including details of :

- (a) Existing transportation conditions
- (b) Local highway network queuing assessed for neutral month and summer peak periods
- (c) Traffic counts/turning movements at B3301/Guildford Road/Loggans Road double mini roundabout
- (d) Details of mitigation including triggers for when improvements may be required and

- (e) Provisions for monitoring reports to be provided to the County Council for approval (in consultation with the Highways Agency) at frequencies to be agreed but not less than every 6 months for the 10 year period commencing with full Occupation of the Development.

“North Quay” means that area within the Site shown edged [●] on Plan [●].

“Occupation” means the physical use of land or buildings within the Development but not including occupation of any such land or buildings for the purposes of construction or fitting out or occupation of a marketing or display suite or facility or occupation in relation to security operations and **“Occupy”** **“Occupants”** **“Occupying”** and **“Occupied”** shall be construed accordingly.

“Parameter Plan” means the plan and schedule appended to this Agreement and so marked [this will specify the parameters of the heights, scale and massing of the buildings forming part of the Development]

“Pattern Building” means the former pattern shop associated with Harvey’s Foundry the location of which is shown [] on Plan []

“Permitted Closures” means temporary closure of any Public Access Area or any part thereof in the following circumstances:

- (A) with the prior approval of the District Council where the District Council is satisfied that such temporary closure is necessary in the interests of public safety or is required for the purposes of essential maintenance, repair, cleansing, renewal or resurfacing works within the Public Access Area in question or for any other reason or proper purpose;
- (a) with the prior approval of the District Council where the District Council is satisfied that such temporary closure is necessary for the purposes of carrying out works for construction (including development or redevelopment or for the placing or replacing of underground services) on the Site or adjoining land;
- (b) temporary closure in the case of emergency where such closure is necessary in the interests of public safety or otherwise for reasons of public safety; and

- (c) closure for a maximum of one day per year to assert rights or proprietorship preventing public rights from coming into being by means of prescription or other process of law
- (d) where permitted or required by the Hayle Harbour Master pursuant to by any Hayle Harbour Byelaw from time to time in force.

“Photographic Record” means the photographic record of the harbour walls within the Site dated [●] and appended to this Agreement.

“Plan 1” means the plan annexed to this Agreement and so marked which identifies the Site and []

“Planning Permission” means planning permission granted by the District Council in respect of the Application [a draft of which planning permission is annexed hereto at [●]].

“Practical Completion” means the date of issue of a Certification of Practical Completion pursuant to a building contract or contracts in respect of the relevant part of the Development and **“Practically Complete”** and **“Practically Completed”** shall be construed accordingly.

“Public Access Area” means any of the areas identified as such pursuant to Clause [10.1].

“Quay Walls Survey Report” means the survey of the harbour walls within the Site dated [●] and annexed hereto.

“Registered Social Landlord” means a registered social landlord as defined in the Housing Act 1996 and registered with the Housing Corporation and also included on the District Council’s list for the time being of approved registered social landlords or which has otherwise been proposed by the Developer and approved by the District Council in writing in relation to the provision of Affordable Housing in the Council’s Area and **“RSL”** shall be construed accordingly.

“Renewables Business Park” means the area of Class B1, B2, B8 or higher education use to be constructed upon North Quay pursuant to the Planning Permission.

“**Reserved Matters**” means those matters to be submitted for approval by the District Council pursuant to Condition [●] and “**Reserved Matters Application**” shall be construed accordingly.

“**Riviere Fields**” means that part of the Site edged [] on Plan []

“**Riviere Dune Grassland Restoration Area**” means the area for dune grassland habitat restoration and/or creation in accordance with Clause [11.6] and which is shown edged [] on Plan []

“**Roundabout Sum**” means the estimated costs of the Roundabout Works as proposed by the Developer and agreed by the County Council in accordance with Clause [7.10].

“**Roundabout Works**” means the works to the double mini roundabout on the B3301 Penmare Terrace/Guildford Road/Carwin Rise/Loggans Road as shown on Drawing [●].

“**Sea Buckthorn Area**” means the area for the management of sea buckthorn in accordance with Clause [11.5] as shown edged [] on Plan []

“**Section 278 Agreement**” means an agreement pursuant to Section 278 of the Highways Act 1980 for the provision of the Loggans Moor Improvements and the St Erth Improvements and the Roundabout Works

“**Site**” means the site of the Development as shown edged red on Plan 1.

“**South Quay**” means the area of the Site shown edged [●] on Plan [●].

“**South Quay Breach**” means the existing area of collapse of the South Quay harbour walls as shown on page [] of the Photographic Record.

“**Spalding Report**” means the report by Spalding Associates and Aquatronics Ltd dated 8 December 2008 entitled “Proposals for Habitat Compensation for Hayle Harbour Development Scheme” and annexed to this Agreement

“**St Erth Improvements**” means the signalisation and associated highway works to the St Erth A30 junction as shown on Drawing [●].

“St Erth Park and Ride” means the park and ride facility proposed to be constructed by the County Council to the south of St Erth Railway Station and adjoining Treloweth Lane.

“St Erth Sum” means the estimated costs of the St Erth Improvements as proposed by the Developer and agreed by the County Council in accordance with Clause [7.8]

“Station Access Land” means the land owned by the Developer and shown hatched blue on Plan []

“Transport Strategy” means the [] dated [] annexed to this Agreement

“Triangular Spit” means that part of the Site shown edged [] on Plan []

“Working Day” means any day (apart from Saturday, Sunday, Christmas Day, Good Friday and any statutory bank holiday) on which clearing banks in England are open for the transaction of ordinary business.

References to any Recital Clause Schedule Paragraph (or any part of them) shall (unless the context otherwise requires) be references to a recital clause schedule or paragraph (or any part of any of them) of this Agreement.

References to any Plan are references to a plan attached to this Agreement.

References to the masculine gender shall include the feminine gender and vice versa.

Unless the context otherwise requires references to the singular shall include the plural and vice versa.

Headings are for ease of reference only and are not intended to be construed as part of this Agreement.

References to the Developer include and (once the Developer has parted with an interest in the Application Site or any part of it constitute) references to the Developer's successors in title to the Site or any part of it .

References to the District Council and the County Council include references to any statutory successor to the District Council as local planning authority and the County Council as local planning authority and highway authority.

References to the 1990 Act and to any section of the Act include any re-enactment of it unless the context otherwise requires.

Nothing in this Agreement shall unlawfully fetter or restrict the exercise by the Councils as local planning authorities or the County Council as highway authority of their rights discretions duties powers or obligations under any statute orders regulations and byelaws.

No provision of this Agreement shall be interpreted so as unlawfully to fetter the Councils in the exercise of their statutory duties.

No waiver whether express or implied by either of the Councils of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall unless evident on the facts constitute a continuing waiver.

2 CONDITIONS PRECEDENT

Save for the provisions of Clauses [] which shall together with this Clause come into effect on the date of this Agreement the provisions of this Agreement shall be conditional upon Commencement of the Development or such later date as the provisions may prescribe.

3 STATUTORY PROVISIONS AND INTERESTS BOUND

3.1 This Agreement is made pursuant to Section 106 of the 1990 Act and all other powers so enabling the parties hereto to the intent that the obligations on the part of the Developer shall be binding upon its interests in the Site and those of its successors in title to the Site.

3.2 The obligations on the part of the Developer as set out in Clauses [] shall be enforceable by the District Council.

3.3 The obligations on the part of the Developer set out in Clauses [] shall be enforceable by the County Council

4 COVENANTS

4.1 The Developer hereby covenants with the District Council and the County Council and each of them to observe and perform the obligations imposed upon it as contained within this Agreement.

4.2 The District Council hereby covenants with the Developer and the County Council and each of them to observe and perform the obligations imposed upon it as contained within this Agreement and that where any sums are paid to the District Council under the terms of this Agreement such sums shall not be expended otherwise than for the purpose identified in this Agreement.

4.3 The County Council hereby covenants with the District Council and the Developer and each of them to observe and perform the obligations imposed upon it as contained within this Agreement and that where any sums are paid to the County Council under the terms of this Agreement such sums shall not be expended otherwise than for the purpose identified in this Agreement.

5 **AFFORDABLE HOUSING**

The District Council and the Developer covenant with each other to undertake their respective obligations as set out in Schedule 1

6 **SUSTAINABLE TRANSPORT**

6.1 The Developer will pay the following contributions to the County Council prior to Commencement of the Development as follows:

.6.1.1 £15,000 for improvements to walking routes within Hayle Town

.6.1.2 £20,000 for improvements to cycle infrastructure within Hayle Town

.6.1.3 £40,000 for improved platform accessibility and Station facilities at Hayle Railway Station.

6.2 The Developer will pay the following contributions to the County Council prior to the Occupation of the first Dwelling:

.6.2.1 £25,000 for bus stop infrastructure improvements in Hayle Town

.6.2.2 £50,000 for St Erth Park and Ride

6.3 The Developer will pay to the County Council the reasonable costs of further transport improvements up to and not exceeding £50,000 as may be identified in the surveys following full Occupation of the Development pursuant to the Monitoring, Performance and Mitigation Strategy such payment or payments to be paid following receipt of a notice in writing from the County Council identifying such further improvements and their estimated costs

6.4 The Developer will pay to the County Council a contribution to a “Hopper” bus service of £600,000 by way of five annual instalments of £120,000 commencing either

.6.4.1 upon first Occupation of Dwellings on Hilltop or Riviere Fields or

- .6.4.2 the Practical Completion of the proposed road from North Quay to Riviere Fields and on to Phillack

whichever is the earlier event.

- 6.5 The Developer will reserve the Station Access Land and will not for a period of fifteen years from the date the Development is Commenced develop or permit the Station Access Land to be developed save in accordance with Clause [6.6].
- 6.6 If the Developer receives notice from the County Council, such notice to be served within the fifteen year period referred to in Clause [6.5] and accompanied by evidence of a scheme and scheme funding for a new access to Hayle Station (which may include landscape and/or public open space proposals) on the Station Access Land, then upon approval of such scheme by the Developer it will transfer the Station Access Land (or such part of it that shall be required for the said scheme) to the County Council at nil consideration.
- 6.7 The County Council covenants with the Developer that if any of the sums paid by the Developer as referred to in this Clause [6] or any part of them shall remain unexpended by the fifth anniversary of each respective payment then the County Council will repay any such unexpended sum to the Developer (meaning in this case the party who made payment) upon the fifth anniversary of the relevant payment and each of them.

7 HIGHWAY WORKS

Footway to Phillack

- 7.1 The Developer shall not open or permit to be opened the proposed road from Riviere Fields through to Phillack [as shown on Plan []]to public traffic until a footway giving access from Riviere Fields to the junction at Churchtown Road/Phillack [as shown on Plan []]has been Practically Completed and is available for public use.

Section 278 Agreement

The Developer will not Commence the Development until the Developer has;

- .7.1.1 served a notice upon the Highways Agency and the County Council requiring the County Council and, if necessary, the Highways Agency to enter into the Section 278 Agreement and

.7.1.2 thereafter has entered into the Section 278 Agreement with the County Council and, if necessary, the Highway Agency

Subject to the following provisions and unless otherwise agreed by the County Council in consultation with the Highways Agency the Developer will not Occupy or permit to be Occupied any Development Area which includes Dwellings until the Loggans Moor Improvements and the St Erth Improvements are Practically Completed and open to public traffic.

Loggans Moor

In the event that the County Council serves a notice in writing upon the Developer stating that it or the Highways Agency requires works other than the Loggans Moor Improvements to be implemented in respect of the Development, such notice to be served prior to or within 10 Working Days of service of the Developer's S278 Notice, then the restriction referred to at Clause [1.3] shall instead prevent the Occupation of any Development Area which includes Dwellings until the Developer has paid to the County Council the Loggans Moor Sum unless the County Council in consultation with the Highways Agency agrees otherwise.

Following receipt of the notice referred to in Clause [1.4] the Developer shall submit to the County Council and the Highways Agency its estimated costs of the Loggans Moor Improvements together with details relating to the estimate. Upon receipt of the estimate the County Council will consult with the Highways Agency and within 10 Working Days of receipt either serve notice upon the Developer that it agrees with the said estimated costs or notice that it disagrees and shall set out in such notice its reasons for disagreement and, where relevant, its own estimated costs of the Loggans Moor Improvements. If the parties cannot agree the estimated costs of the Loggans Moor Improvements within [20] Working Days of the County Council's notice of disagreement either party may refer the matter to the Disputes Resolution Procedure.

The County Council may spend the Loggans Moor Sum on improvements to the Loggans Moor Roundabout or any other improvements to the highway which will provide reasonable mitigation of the impact of traffic generated by the Development on the highway network which the County Council proposes, in consultation with the Highways Agency, and the Developer agrees.

St Erth Improvements

In the event that the County Council serves a notice in writing upon the Developer stating that that it or the Highways Agency requires works other than the St Erth Improvements to be implemented in respect of the Development, such notice to be served prior to or within 10 Working Days of service of the Developer's S278 Notice, then the restriction referred to in Clause

[1.3] shall instead prevent the Occupation of any Development Area which includes Dwellings until the Developer has paid to the County Council the St Erth Sum unless the County Council in consultation with the Highways Agency agrees otherwise.

Following receipt of the notice referred to in Clause [1.7] the Developer shall submit to the County Council and the Highways Agency its estimated costs of the St Erth Improvements together with details relating to the estimate. Upon receipt of the estimate the County Council consult with the Highways Agency and will within 10 Working Days of receipt either serve notice upon the Developer that it agrees with the said estimated costs or notice that it disagrees and shall set out in such notice its reasons for disagreement and, where relevant, its own estimated costs of the St Erth Improvements. If the parties cannot agree the estimated costs of the St Erth Improvements within [20] Working Days of the County Council's notice of disagreement either party may refer the matter to the Disputes Resolution Procedure.

The County Council will may spend the St Erth Sum on improvements to the St Erth junction or any other improvements to the highway which will provide reasonable mitigation of the impact of traffic generated by the Development on the highway network which the County Council proposes, in consultation with the Highways Agency, and the Developer agrees.

Roundabout Works

Prior to the Commencement of any Development Area which includes Dwellings the Developer shall submit to the County Council and the Highways Agency its estimated costs of the Roundabout Works together with details relating to the estimate. Upon receipt of the estimate the County Council will consult with the Highways Agency and will within 10 Working Days of receipt either serve notice upon the Developer that it agrees with the said estimated costs or notice that it disagrees and shall set out in such notice its reasons for disagreement and, where relevant, its own estimated costs of the Roundabout Works. If the parties cannot agree the estimated costs of the Roundabout Works within [20] Working Days of the County Council's notice of disagreement either party may refer the matter to the Disputes Resolution Procedure.

The Developer shall not Occupy any Dwelling until it has placed on deposit in the Account the Roundabout Sum unless the County Council in consultation with the Highways Agency agrees otherwise.

The County Council may spend the Roundabout Sum on the Roundabout Improvements or other improvements to the B3301 Penmare Terrace/Guildford Road/Carwin Rise/Loggans Road junction or any other improvements to the highway which will provide reasonable mitigation of the

impact of traffic generated by the Development on the highway network which the County Council propose, in consultation with the Highways Agency, and the Developer agrees.

Churchtown Road Junction

Following the opening to public traffic of the Churchtown Road Junction the Developer will include within its obligations pursuant to the Monitoring, Performance and Mitigation Strategy the monitoring of both background traffic flows from the Churchtown Road Junction to the junction of Lethlean Lane with the B3301 (“the study corridor”) together with traffic flows in the study corridor which arise from the Development in accordance with a methodology agreed with the County Council.

The Developer will undertake a review of traffic in the study corridor referred to in Clause 7.13 and submit details of such review to the County Council on each of the following occasions:

.7.1.3 upon the submission of a Reserved Matters Application which includes the details of the Churchtown Road Junction and;

.7.1.4 when monitored traffic levels arising from the Development exceed [30%] of background levels within the study corridor referred to in Clause 7.13 within any timeframe set by the methodology agreed with the County Council.

If following any review referred to in Clause 7.14 the County Council reasonably decides that the impact on the study corridor of traffic arising from the Development is causing an unacceptable impact on the study corridor (in terms of safety or congestion or impact on amenity of residents in the village of Phillack) then the County Council may propose mitigation measures to the Developer for approval to address such unacceptable impact.

Provided that such mitigation measures do not include the closure of the Churchtown Road Junction to traffic (which closure may or may not exclude emergency vehicles and/or public transport vehicles) the Developer will pay to the County Council either:-

.7.1.5 the reasonable cost of implementation of such agreed mitigation measures such sum not to exceed [£] or

.7.1.6 such reasonable contribution towards the implementation of a wider strategic scheme which includes directly or indirectly objectives which will reduce unacceptable impact in the study corridor such reasonable contribution to be proportionate to the impact of traffic arising from the Development in the study corridor and shall not in any event exceed [£].

Foundry Junction

The Developer will include within its obligations pursuant to the Monitoring, Performance and Mitigation Strategy the monitoring of both background traffic flows and traffic flows which arise from the Development at the Foundry Junction in accordance with a methodology agreed with the County Council.

The Developer will undertake a review of traffic at the Foundry Junction and submit details of such review to the County Council when monitored traffic levels arising from the Development exceed [30%] of background levels at the Foundry Junction within any timeframe set by the methodology agreed with the County Council.

If following any review referred to in Clause 7.18 the County Council reasonably decides that the impact on the Foundry Junction of traffic arising from the Development is causing an unacceptable impact (in terms of safety or congestion or impact on amenity of residents of Hayle) then the County Council may propose to the Developer for its approval restrictions on the Occupation of such parts of the Development which have not at the review date been commenced and mitigation measures to address such unacceptable impact in lieu of restrictions on Occupation.

If the Developer so elects it will pay to the County Council (in lieu of any proposed restrictions on the Occupation of such parts of the Development which have not at the review date been commenced) either :-

.7.1.7 the reasonable cost of implementation of such agreed mitigation measures (such sum not to exceed [£]) or:

.7.1.8 such reasonable contribution towards the implementation of a wider strategic traffic scheme which includes directly or indirectly objectives which will reduce unacceptable impact at the Foundry Junction such reasonable contribution to be proportionate to the impact of traffic arising from the Development on the Foundry Junction and shall not in any event exceed [£]

and upon payment of such sum the further Occupation of the Development will not be restricted pursuant to the provisions of Clause 7.19.

Repayment

The County Council covenants with the Developer that if the Loggans Moor Sum and/or the St Erth Sum sums and/or any sums paid by the Developer for mitigation measures at the Churchtown Road Junction and/or the Foundry Junction or any part of them shall remain

unexpended by the fifth anniversary of each respective payment then the County Council will repay any such unexpended sum to the Developer (meaning in this case the party who made payment) upon the fifth anniversary of the relevant payment and each of them.

The County Council covenants with the Developer that if the Roundabout Sum or any part of it shall remain unexpended by the tenth anniversary of payment then the County Council will repay any such unexpended sum to the Developer (meaning in this case the party who made payment) upon the tenth anniversary of the payment.

8 PARKING

The Hilltop Car Park shall be restricted to use as a construction compound and boat storage area until car parking spaces are phased in as follows:

- .8.1.1 100 spaces upon the removal of the Harvey Towans Car Park
- .8.1.2 25 spaces on completion of the Renewables Business Park
- .8.1.3 20 spaces on first Occupation of Dwellings on Hilltop
- .8.1.4 100 spaces on first Occupation of Dwellings on North Quay
- .8.1.5 180 spaces on completion of the Marina or if the Marina is constructed in phases upon completion of the first phase of the Marina
- .8.1.6 31 spaces on first Occupation of commercial/recreational space on North Quay (excluding residential use)

The management of any public car parking provided within the Development pursuant to the Planning Permission shall be undertaken so as not to conflict with any District Council planning policy in force at the relevant time which has as its objective the management and use of public car parking within Hayle Town.

Upon or prior to the submission of Reserved Matters for any development on South Quay the Developer will submit to the County Council a re-assessment of the parking need associated with the South Quay development. This re-assessment will be based on reasonable commercial need but in the context of a requirement upon the Developer to use reasonable endeavours to keep parking for the Development to a level which is consistent with current policy and practice and in accordance with public transport provision in Hayle Town.

9 SUSTAINABLE TRANSPORT PLAN

Upon submission of Reserved Matters for any Development Area the Developer will submit for approval by the County Council in consultation with the Highways Agency: -

- .9.1.1 a Development Area Travel Plan for that Development Area including construction of it in accordance with prevailing policy and best practice and
- .9.1.2 a Monitoring, Performance and Mitigation Strategy for that Development Area.

Each development Area shall be constructed and operated in accordance with the relevant Development Area Travel Plan and Monitoring, Performance and Mitigation Strategy.

10 GREEN SPACE AND PUBLIC REALM

Submission of Plans/Details

Prior to Commencement of each Development Area, the Developer shall submit to the District Council for approval details of the public realm/green space (if any) as a Public Access Area or Areas to be provided within that Development Area including details of the equipment/facilities (if any) to be provided within such Development Area. Such details shall include triggers and thresholds of development to secure delivery of the Public Access Area or Areas within that Development Area. For the avoidance of doubt the Public Access Area or Areas shall exclude private gardens or spaces where it is intended that use is restricted to residents or employees of premises within the Development.

Physical Works

The Developer shall not Occupy or permit to be Occupied more than 100 Dwellings or 1,000 square metres of any non-residential building or buildings constructed pursuant to the Development on North Quay and/or Hilltop and/or Riviere Fields until the repairs to the harbour walls of North Quay and East Quay as permitted by the Detailed Planning Permission have been completed to the reasonable satisfaction of the District Council

Subject to the provisions of Clause 10.4 the Developer shall not Occupy or permit to be Occupied more than 350 Dwellings on North Quay, Hilltop or Riviere Fields collectively until it has undertaken and completed works to repair the South Quay Breach in accordance with the requirements of any necessary Listed Building Consent and to the reasonable satisfaction of the District Council PROVIDED ALWAYS THAT not more than 150 Dwellings on Riviere Fields may be Occupied until this obligation has been complied with.

The Developer shall not Occupy or permit to be Occupied any building or buildings constructed pursuant to the Development on South Quay or any part of it until the repairs to the harbour walls of South Quay as set out in the Quay Walls Survey Report (which for the avoidance of doubt includes the South Quay Breach) have been completed to the reasonable satisfaction of the District Council.

Until completion of repairs to the harbour walls referred to in Clause [10.2 and 10.4] the Developer shall maintain them in the condition current at the date of this Agreement as noted on the Photographic Record and will take all reasonable steps to prevent further deterioration.

In the event of breach of the obligation set out in Clause [10.6] the District Council may execute any repairs or other works to maintain the condition of the harbour walls or any part of them by its own employees or contractors and recover its reasonable and proper costs as reasonably and properly certified by [District Council officer]

Before starting any works under Clause 10.6 the District Council shall first give to the Developer [20] Working Days' written notice or (in the event of there being a significant danger to the public) such lesser as may in the circumstances be reasonable of its intention so to do.

Any notice served under Clause 10.7 shall specify the period of the notice ("the notice period") the extent of the work which the District Council proposes to carry out and full details of all matters in respect of which it is alleged the Developer's obligations under Clause 10.5 have not been carried out in accordance with the terms of this Agreement.

If before the expiry of the notice period the Developer serves written notice upon the District Council either:

.10.1.1 that the Developer intends diligently to execute the works specified in the District Council's notice served in accordance with Clauses 10.7 and 10.8 or

.10.1.2 that the Developer disputes the existence of any breach of the Developer's obligations under Clause 10.5 and/or that the works proposed by the District Council are not reasonable in the context of any such breach and/or that the period in which such breach is to be remedied is not reasonable

then the District Council shall not be entitled to execute such works as specified in that notice unless in the case of a notice served under Clause 10.9.1 the Developer then fails to execute those works or in the case of a notice served under Clause 10.9.2 the Developer withdraws its notice or the Expert decides pursuant to the Disputes Resolution Procedure that there has been a breach of the Developer's obligations

pursuant to Clause 10.5 and that the works specified in the District Council's notice served pursuant to Clauses 10.7 and 10.8 and the period allowed for compliance are reasonable in the context of that breach.

If the parties cannot agree on the existence of the breach and/or the steps to remedy it and/or the period within which any necessary works are to be undertaken either party may refer the matter to the Disputes Resolution procedure.

Goonvean Engine

The Developer will make available a site [not exceeding [] square metres] to the [Goonvean Engine] Society for the display of parts of the historic engine structure known as the Goonvean Engine with associated artefacts on the following terms:

- .10.1.3 The grant of the lease or licence (at the Developer's discretion) shall be at a peppercorn or other nominal sum and
- .10.1.4 The Society will be responsible for obtaining any planning permission and/or listed building consent which may be necessary for the display and
- .10.1.5 The details of the display including quality and materials shall first be subject to the Developer's approval and
- .10.1.6 The Society shall be responsible for maintaining the display and any surrounding land in good condition and the Developer will have the right to terminate the grant and remove the display if the Society is in breach of that requirement and
- .10.1.7 The Developer will have the right at its own expense to move the location of the display anywhere on the Foundry Car Park or South Quay where removal from its original location is required or desirable for the development of the Site.

Pattern Building

At any time prior to the submission of a Reserved Matters Application to the District Council which includes detailed proposals for the Pattern Shop the District Council may serve notice on the Developer accompanied by evidence that it has an appropriate scheme for the development and use of the Pattern Building and funding to implement that scheme and requiring the Developer to transfer the Pattern Building to the District Council or its nominee.

Upon approval of such scheme by the Developer the Developer will transfer the Pattern Building to the District Council or its nominee upon reasonable terms which will include the following:

- .10.1.8 Such transfer shall be for nil consideration and
- .10.1.9 The proposed scheme must be completed prior to the expiry of 5 years from transfer of the Pattern Building and subject to the obligation of the transferee to transfer the Pattern Building back to the Developer if the Developer serves notice so requiring in the event that the scheme has not been implemented within the said 5 year period and
- .10.1.10 The development and use of the Pattern Shop shall be in accordance with the scheme agreed pursuant to Clause [10.12] unless the Developer otherwise agrees.

Management

With the First Reserved Matters application for any Development Area of the Development which includes public realm/green space the Developer will submit a long term stewardship/management plan for the public realm/green space including details as to how and by what type of organisation such management and maintenance will be undertaken and how it is to be funded.

Where the Developer has identified areas of public realm/green space in accordance with Clause 10.1 then unless otherwise agreed with the District Council the Developer will permit the general public to have access over such areas subject only to the Permitted Closures.

11 ECOLOGY

Dune Mitigation

Following Implementation of the Development the Developer will manage the Dune Area with a view to responding with appropriate management measures to deal with the impact of increased visitors to the Dune Area which is reasonably attributable to the Development and will in so doing consult with the Towans Partnership, or any successor or other organisations with interests in and responsibilities for dune management in the Hayle area .

The Developer will serve notice on the County Council as to the intended date of Commencement of development of the Hilltop Car Park not later than 6 months prior to that intended Commencement date.

The Developer will pay to the County Council

- .11.1.1 the sum of £60,000 prior to Commencement of the Hilltop Car Park to be held by the County Council for measures to address indirect and future impacts of the Development on the dunes system in the Hayle area and
- .11.1.2 the sum of £60,000 to be paid prior to Occupation of the 101st Dwelling constructed on North Quay and Hilltop and Riviere Fields to the County Council as a contribution to the costs of providing a dunes officer with responsibility for managing the impact of visitors on the dunes system in the Hayle area.

At least 6 months prior to Commencement of construction of the Hilltop Car Park the Developer will submit method statement proposals including a programme for implementation for the creation and restoration of the dune habitat on the Harveys Towans Car Park for approval by the County Council in consultation with the Environmental Consultees and upon approval the Developer will implement the scheme in accordance with the approved programme. The details to be submitted will also include proposals for monitoring and management of the Harveys Towans Car Park and the Developer will undertake the monitoring and management of that area for a period of 5 years following completion of the creation and restoration works.

At least 6 months prior to Commencement of construction of the Hilltop Car Park the Developer will submit method statement proposals including a programme for implementation for the clearance and management of sea buckthorn on the Sea Buckthorn Area for approval by the County Council in consultation with the Environmental Consultees and upon approval the Developer will implement the scheme in accordance with the approved programme. The details to be submitted will also include proposals for monitoring and management of the Sea Buckthorn Area and the Developer will undertake the monitoring and management of that area for a period of 5 years following completion of the creation and restoration works.

Prior to or with the submission of Reserved Matters (or the first such submission) for Hilltop the Developer will submit method statement proposals including a programme for implementation, for the creation/restoration of dune grassland habitat on the Riviere Dune Grassland Restoration Area for approval by the County Council in consultation with the Environmental Consultees and upon approval will implement the scheme in accordance with the approved programme. The details to be submitted will also include proposals for monitoring and management of the new/restored area and the Developer will be responsible for undertaking monitoring and management of that area for a period of 5 years following completion of the creation/restoration works.

Inter-tidal habitat

The Developer will serve notice on the County Council as to the intended date of Commencement of works for the removal of Cockle Bank not later than 6 months prior to that intended Commencement date.

No later than [6] months prior to the Commencement of works for the removal of the Cockle Bank the Developer will submit to the County Council for approval in consultation with the Environmental Consultees by way of mitigation or compensation for all Development-related losses of inter-tidal and sub-tidal habitats a feasibility study for the creation of new wetland habitat at three sites short-listed in the Spalding Report or such other sites which are identified by the Developer and which may then be available and appropriate . Such feasibility study shall identify a preferred site or sites and shall include detailed proposals for the preferred site or sites including delivery and a programme for implementation and monitoring of the wetland creation scheme or schemes.

The Developer will make available to the Council a sum not exceeding £212,000 for the purchase of land and implementation and monitoring of a scheme or schemes identified in the feasibility study submitted in accordance with Clause [11.8] or any other suitable scheme which the County Council may nominate.

The Developer shall make payments to the County Council of such sums as the County Council may demand in writing (such demand or demands to be served no earlier than the date of submission of the feasibility study by the Developer in accordance with Clause 11.8 and to be accompanied by evidence of costs incurred by the provision of the wetland creation scheme or schemes) up to the said sum of £212,000 and shall use reasonable endeavours to assist the County Council in the delivery of the said scheme or schemes.

The harbour arm constructed for the new Fishermen's Harbour as part of the Development will be provided with timber fendering and other surface treatments as appropriate to encourage colonisation in inter- and sub-tidal species PROVIDED ALWAYS THAT this obligation shall not require the Developer to expend more than £10,000 in respect of this obligation and such treatments shall not prevent or obstruct the use of the quay wall for mooring and associated purposes.

Marina

The Developer shall use all reasonable endeavours including the insertion of appropriate provisions in any proposed lease of the Marina to require the Marina berth holders to undergo

WiSe training or similar instructive programme for the protection of the environment by boat users..

Prior to or with submission of the Reserved Matters application (or the first such Reserved Matters application) for the Marina the Developer will provide an assessment to the County Council of the impact (if any) of increased waterborne activities arising from the use of the Marina and generally from watersports activities within the harbour generated by the Development.

Where the assessment referred to in Clause 11.13 indicates that mitigation may be required for any impact identified by such assessment the Developer shall with such assessment also submit proposals for mitigation including a programme for implementation for approval by the County Council in consultation with the Environmental Consultees. The Developer will implement any such mitigation in accordance with the approved programme.

Ecological Management Plan

Prior to or with the first Reserved Matters application for each Development Area the Developer will submit to the County Council for approval in consultation with the Environmental Consultees an ecological management plan including a CEMP to deal with the management mitigation and monitoring of the impact of that Development Area upon ecology within the Site.

The ecological management plan to be submitted by the Developer shall conform with the requirements of Schedule 2 insofar as relevant to the particular Development Area.

Following the submission of the first ecological management plan in accordance with Clause 11.15 submissions of ecological management plans for subsequent Development Areas shall include proposals for interruption or change of any ongoing ecological monitoring regimes as may be required by the construction and operational requirements of such subsequent Development Area or Development Areas.

The details of monitoring arrangements set out in Schedule 1 will be determined through a Development Monitoring Strategy Working Group whose members will comprise representatives of the Developer and the Environmental Consultees. The Working Group will provide the forum for consultation on ongoing monitoring results.

Unless otherwise agreed with the District Council and the County Council no development shall be permitted on the Triangular Spit other than in accordance with any management regime for protection of petalwort and for the management of operational disturbance to birds at Carnsew

Pool and Lelant Water which may be agreed with the County Council in consultation with the Environmental Consultees.

Repayment

The County Council covenants with the Developer that if the sums paid by the Developer to the County Council pursuant to Clauses [11.3.1 and/or 11.3.2 and/ or 11.10] or any part of them shall remain unexpended by the fifth anniversary of each respective payment then the County Council will repay any such unexpended sum to the Developer (meaning in this case the party who made payment) upon the fifth anniversary of the relevant payment and each of them.

12 EDUCATION

The Developer shall within [3] months of sale of each Market Housing Unit provide details in writing to the County Council identifying the address of the Unit the number of bedrooms within it and whether or not the terms of the sale allow for permanent and continuous occupation.

The Developer will pay to the Council the sum of £1500 (or such other sum as the County Council in its capacity as education authority may require for this purpose as identified in its policy and published at the time that payment becomes due under this provision) for each Market Housing Unit of 2 or more bedrooms sold for permanent and continuous occupation within 12 months of completion of each such unit or confirmation of its sale terms pursuant to Clause 12.1 whichever is the later event.

13 SUSTAINABILITY

Prior to Commencement of each Development Area the Developer will submit to the Council for approval a Development Area Energy Strategy to demonstrate how the required 10% reduction in CO₂ emissions in that Development Area will be achieved.

The Development Area Energy Strategy will include details of the Developer's commitment:-

- .13.1.1 to incorporating on-site renewable energy generation and;
- .13.1.2 to achieving BREEAM 'Very Good' ratings or equivalent for the office and commercial areas of the Development and;
- .13.1.3 to achieving Code for Sustainable Homes Level 4 for Dwellings.

The Developer will use reasonable endeavours to access energy from the Wave Hub (if possible and permitted) to achieve the objectives of the Development Area Energy Strategy requirements.

14 **DRAINAGE**

The Developer will undertake such on-site works or pay the costs of such off-site works which may be reasonably required by South West Water for the improvement to existing infrastructure for drainage and the relief of flooding and which are reasonably deemed to be required because of the Development. Such works or payments shall be undertaken in accordance with a programme reasonably required by South West Water.

15 **PRIMARY HEALTH FACILITIES**

The Developer shall pay to the District Council the sum of £180 for each Dwelling comprised within the Development within 12 months of completion of each such unit.

The Developer will make a site or space available at open market value within the Development for the relocation of the existing Hayle general practitioners' medical practice.

If no agreement has been reached for the transfer of such site identified in accordance with Clause 15.2 within 1 year of the commencement of marketing of the Development Area within which such site falls then the use of such site shall cease to be restricted under the terms of this Agreement and shall be available for alternative uses by the Developer subject to the grant of planning permission.

16 **BUSINESS CENTRE**

The Developer will make a site or space available at open market value within the Development for a Business Centre or Business Centres.

If no agreement has been reached for the transfer or lease of such site or sites within 1 year of the commencement of marketing of the Development Area within which such site falls then the use of such site shall cease to be restricted under the terms of this Agreement and shall be available for alternative uses by the Developer subject to the grant of planning permission.

17 **DESIGN FRAMEWORK AND DETAILED DESIGN CODES**

Unless otherwise permitted by the District Council no Development Area of the Development shall be constructed other than in accordance with the Parameter Plan and the principles set out in Hayle Harbour Development Framework and Design Codes PROVIDED THAT any permitted variation must accord with the description of the development in the Planning permission and the District Council is satisfied:-

.17.1.1 that any permitted variation will have no significant adverse environmental effects or

the application for variation is accompanied by an environmental statement assessing the likely significant environmental effects of the variation.

18 AGREEMENTS AND DECLARATIONS

Lapse Revocation or Modification of the Permission

The obligations in this Agreement shall lapse and all entries on the Register of Local Land Charges and the Register of Title of the Site relating to it shall be deleted if the Planning Permission

- .18.1.1 lapses without having been Commenced; or
- .18.1.2 is revoked; or
- .18.1.3 is modified other than at the request of the Developer; or
- .18.1.4 is quashed.

18.2 Other Planning Permissions

This Agreement and the obligations imposed herein on the Developer shall not in any way constrain the development or use of the Site (or any part or parts of it) in accordance with any planning permission (other than the Planning Permission) granted by the District Council or the Secretary of State for Communities and Local Government.

18.3 Notices

Any notice or other written communication to be served or given under the terms of this Agreement shall be deemed to have been validly served or given if transmitted by facsimile, delivered by hand or sent by registered or recorded delivery post to the party upon whom it is to be served or to whom it is to be given at the address as specified above and

- .18.3.1 in respect of the District Council and the County Council it shall be marked for the attention of “The Chief Executive”;

- .18.3.2 in respect of the County Council in relation to a highway matter it shall be marked for the attention of the “Director for []” or as otherwise notified for the purpose by notice in writing by the County Council;
- .18.3.3 In respect of the Developer it shall be marked for the attention of the “Company Secretary”.

Parting with Interests in the Application Site and Successors in Title

- .18.3.4 The Developer shall upon parting:
- (a) with the fee simple in any part of the Site be released from all obligations and duties under the terms of this Agreement insofar as they relate to or are binding on that part of the Site and;
 - (b) with the entirety of its interest in the Site as a whole be released from all liabilities whatsoever under the terms of this Agreement.
- .18.3.5 The releases provided for in Clause [18.4.1] shall not apply to any prior or existing breach as at the date of disposal.
- .18.3.6 Any obligation under the terms of this Agreement which is expressed to be binding on a particular area of land shall be binding on the Developer’s successors in title but only insofar as they are successors in title to that area of land or relevant part of it and on the basis that such successors benefit from Clause [18.4.1] in (mutatis mutandis) the same way as the Developer.

Liability of Successors

- .18.3.7 No successor in title to the Developer shall be liable for any breach of any obligation which occurs in relation to any area of the Site which that successor does not own or control or which is carried out by any person other than that successor.
- .18.3.8 No obligation under this Agreement shall be enforceable against any mortgagee or receiver unless such mortgagee or receiver shall have taken possession of the relevant part of the Site in exercise of its power of sale but no successor in title to any such mortgagee or receiver shall (without prejudice to this Clause [18.5.2]) take free of any obligation which binds that part of the Site to which it or they are a successor in title.

Discharge by Performance

Upon the performance discharge or other fulfilment of the covenant obligations (or any of them) by the Developer, any successor in title, the District Council or the County Council under the terms of this Agreement such covenant obligation or obligations shall absolutely cease and determine save in respect of any antecedent breach.

Registration as a local land charge

This Agreement may be registered by the District Council as a local land charge in compliance with section 1 Local Land Charges Act 1975 on condition that the District Council shall from time to time as and when any obligation under this Agreement is performed note the fact of such performance on such register and shall accordingly discharge the land to the extent of such performance.

VAT and Stamp Duty

- .18.3.9 If the performance of any obligation under this Agreement by the Developer constitutes a taxable supply of goods or services by the Developer to the District Council and/or the County Council the Developer may (unless the District Council and/or the County Council certifies to the Developer that it is not liable to pay VAT on the relevant supply and covenants to the Developer that it will indemnify the Developer against any VAT which is due on the said supply) issue a VAT invoice in the requisite amount to the District Council and/or the County Council.
- .18.3.10 If the performance of any obligation under this Agreement gives rise to a charge to Stamp Duty or Stamp Duty Land Tax for which (if at all) the Developer must account for to HM Revenue and Customs the Developer may require of the District Council and/or the County Council as a precondition to performance of such obligation that the District Council and/or the County Council first pays to the sum required to discharge any such Stamp Duty or SDLT liability on the part of the Developer

Overdue Payments

- .18.3.11 Payments required to be made under the terms of this Agreement shall for the purposes of this Clause [18.9.1] be deemed to fall due and to be payable within 28 days of the date specified for payment in the relevant Clause or if no date is specified in the relevant Clause then within 28 days after the occurrence of the event triggering the relevant payment.

Contracts (Rights of Third Parties) Act 1999

- .18.3.12 This Agreement does not and is not (save where this Clause is in any other Clause expressly (by express reference) excluded) intended to confer any rights whatsoever on any person who is not a party to this Agreement pursuant to Contracts (Rights of Third Parties) Act 1999.
- .18.3.13 (Without prejudice to Clause [18.10.1]) this Agreement may be varied revoked or supplemented without the consent of any third party.

Dispute Resolution

- .18.3.14 Save where expressly excluded any difference disagreement or question which arises between the parties under the terms of this Agreement may be referred to an Expert under the Dispute Resolution Procedure.
- .18.3.15 The decision of the Expert under the Dispute Resolution Procedure shall (save in the case of manifest error or in relation to a point of law) be final and binding on all of the parties to the dispute but shall not preclude the Developer from recommencing any approval procedure under the terms of this Agreement with revised proposals.
- .18.3.16 The Dispute Resolution Procedure shall apply to any reference to the Expert.
- .18.3.17 Each party shall bear their own costs in relation to preparing and submitting evidence to the Expert save that the Expert shall have the power to determine how costs are to be awarded.

18.4 Planning Gain Supplement Tax and Community Infrastructure Levy

- .18.4.1 If there is levied on the Developer in addition to the requirements of this Agreement any requirement to make any payment by way of planning gain supplement tax planning charge or community infrastructure levy or any other requirement that the Developer pay to the District Council and/or the County Council and/or to HM Revenue and Customs or to any other revenue collecting body designed to fund benefits such as those toward which the Developer is making any payment under this Agreement:
- (a) the Developer may require of the District Council and/or the County Council that as a precondition to making any such payment under this Agreement the District Council and/or the County Council first undertakes that if any of the above eventualities arises it shall repay to the Developer whichever is the

lesser of the amount of planning gains supplement community infrastructure levy and planning charge due from the Developer and the amount payable under this Agreement in connection with which the Developer seeks such repayment undertaking

- (b) any unmet obligation of the Developer to make any such payment under this Agreement shall be reduced commensurately with the amount of any amount it is required to pay by way of planning gain supplement tax planning charge or community infrastructure levy.

18.5 Void Agreement

- .18.5.1 If any provision of this Agreement is declared by any Court to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall if required amend that provision in accordance with or to give effect to the decision of the Court

18.6 Approvals and Consents

- .18.6.1 Where this Agreement:
- (a) requires any matter to be agreed approved certified consented to or determined by any party or any person on behalf of any party hereto under this Agreement such agreement approval certification consent or determination shall not be unreasonably withheld or delayed and shall be given in writing
- (b) requires any report review strategy study or other document to be prepared and/or submitted to another party such report review strategy study or other document shall be prepared and submitted in writing
- .18.6.2 The parties agree with one another to act reasonably and in good faith in the fulfilment of the objectives of this Agreement
- .18.6.3 Where it is provided in this Agreement that a matter is to be agreed by any of the parties or is to be agreed or approved by any of the parties and a timescale for such agreement being reached or agreement or approval or deemed approval being given is not provided then (without prejudice to Clause [18.14.1]) the relevant provision shall be deemed to be subject to a proviso that

- ()a the party in receipt of the submission of the matter to be approved or agreed shall respond in writing within 15 Working Days of receipt of such submission either indicating approval or setting out details of disagreement; and
- ()b the party in receipt of any amended submission following the exchange referred to in [Clause 18.14.3 (a)] shall respond in writing within 15 Working Days of receipt of such amended submission either indicating approval or setting out details of disagreement; and
- ()c if agreement is not reached or the matter is not agreed or approved within a period of 40 Working Days then the matter may be referred to the Expert pursuant to Clause [18.11] PROVIDED THAT this provision shall not prevent a dispute from being referred to the Expert earlier than the expiry of such period by any party to this Agreement where that party is of the view that agreement will not be reached or the matter will not be agreed or approved within the said period

Schedule 1 Affordable Housing

[The latest extract from Heads of Terms - detailed drafting to follow]

Affordable Housing

Definition of Affordable Housing

- .18.6.4 Affordable housing provision will be made as follows. Occupancy of the affordable housing units will be restricted to those who can reasonably demonstrate that their levels of income prevent them from renting or buying housing generally available in the open market, with appropriate local connections.
- .18.6.5 Affordable Housing will include all types of tenure currently contemplated by policy including social renting, intermediate rented, shared ownership/equity, MyChoice Homebuy, New Build Homebuy but shall also include units discounted for sale.

Tenure and Mix

- .18.6.6 On the basis that 1,039 or more units are permitted, 175 of the residential units granted permission as part of the development will be provided for affordable housing purposes. If less than 1,039 are permitted, then this requirement will be expressed as 17 percent of the total permitted residential units.

Mode of Delivery

- .18.6.7 With or before the first reserved matters application which includes any residential unit the Developer shall submit to the Council for approval “the Affordable Housing Scheme” which will provide details in respect of the phasing, number, mix, size and location of the sites for affordable housing to be delivered in respect of the development together with triggers for delivery.
- .18.6.8 The affordable housing will be provided by the developer either as
- The sale of sites to Affordable Housing Providers (to include Registered Social Landlords registered with the Homes and Communities Agency) in time for

delivery of the requisite number of affordable housing units for each relevant Development Area or

- Provided as units discounted for sale and the Affordable Housing Scheme shall, if the developer so elects, include up to 42 such units or, if less than 1,039 residential units are permitted, up to 4% of the total permitted residential units as discounted for sale.

Price

- .18.6.9 The price to be commanded for the affordable housing sites will be such a price as can be agreed between the Developer and the Affordable Housing Provider. Discounted units for sale will be priced to an agreed formula/agreed discount to open market value.

Construction Standards

- .18.6.10 All discounted units for sale will be required to be constructed at a minimum to level 4 of the Code for Sustainable Homes. The terms of sale to the Affordable Housing Provider will include a requirement for construction to the same or better standard.

18.7 Affordable Housing to be Provided in Perpetuity

- .18.7.1 The agreement for the sale of sites or units for affordable housing will include provisions requiring them to be secured in perpetuity with the exception only of the following
- (a) Lessees of the shared ownership units who have staircased their interest in the unit to 100% equity share in the unit;
 - (b) mortgagee in possession clause (subject to the pre-emption rights to the Council); and
 - (c) successors in title to either of the above.
- .18.7.2 Discounted units for sale will be subject to covenants so that:
- (a) Units may only be sold subsequently to those on local incomes who cannot afford to rent or buy properties which are generally available in the open market, with and appropriate local connection and who are registered on the Council's common register and;

()b At an agreed discount to Open Market Value]

Schedule 2 Ecological Management Plan

The CEMP:

The CEMP shall include the following provisions:

establishing baseline conditions where necessary;

prevention of the release of pollutants/harmful substances into the aquatic environment;

a construction-phase water quality monitoring regime, to be defined and agreed with environmental consultees;

the timing of specific works likely to have a significant impact on ecology to be determined primarily with reference to a matrix of “seasonal sensitivities” of ecological receptors;

monitoring of aquatic ecology during the construction of each Development Area with provisions for management in the event that Environmental Quality Standards are exceeded;

ornithological mitigation components (defined in Annexe 12N of the Environmental Statement which was submitted with the Planning Application), including the identification of development related disturbance risk factors, resultant control measures and related monitoring;

translocation, by licence, of petalwort colonies on South Quay including proposal for and research/studies in support of translocation sites;

mitigation of impact on bats including undertaking works under EPS licence wherever necessary including re-survey (if indicated) in advance of development in sufficient time to modify plans and/or acquire relevant licences, avoidance of roost sites during construction, replacement of lost roost sites;

mitigation of impact on reptile communities including protection of habitats and translocation of species during construction;

mitigation of impact on western ramping fumitory, purple ramping fumitory and ivy broomrape, involving translocation of substrates / plant material prior to construction;

management of the removal of Cornish hedges and the establishment of approximately 280 metres of new Cornish hedges;

Continuation of all construction-phase monitoring on an annual basis and a further and final monitoring exercise 12 months following completion of impacting construction works. Should independent audit of monitoring results raise concerns that the monitoring surveys do not show recovery to baseline levels conditions won the final monitoring exercise then the surveys shall continue until the mitigation proposals are proven. Should independent audit of monitoring results show that recovery to baseline conditions has occurred before completion of the []-year monitoring period monitoring will be terminated at that point. The role of the independent auditor will be defined in the CEMP and method of appointment agreed with the Environmental Consultees.

Monitoring, with the objective of detecting operational phase impacts on aquatic ecology (invertebrates, algae, fish and aquatic birds), comprising:

A water quality monitoring regime relevant to the Harbour operations proposed by the Development (impoundment, sluicing, dredging), to be defined and agreed with the County Council in consultation with the Environmental Consultees.

Baseline and operational-phase fish surveys in Carnsew Pool, Copperhouse Pool, the Harbour and Penpol Creek, with baseline surveys to take place in the summer prior to commencement of the relevant works in each Development Area and operational surveys to commence in the summer following completion of the relevant works and to continue every two years for [] years.

Invertebrate and algae surveys on the new Fishermen's Quay structures comprised in the Development commencing in the summer following completion of the relevant works in each Development Area, to continue for a period of [] years.

Baseline and operational surveys for algae and Salicornia in Carnsew Pool and Copperhouse Pool, with baseline surveys to take place in the summer prior to commencement of the relevant works in each Development Area [what works?] and operational surveys to commence following completion of the relevant works and to continue for [] years.

Baseline and operational surveys for invertebrates in Carnsew Pool and Copperhouse Pool, with baseline surveys to take place in the summer prior to commencement of the relevant works in each Development Area [what works?] and operational surveys to commence following completion of the relevant works and to continue every two years for [] years.

Baseline and operational surveys of the extent of biotopes in Copperhouse Pool dominated by Enteromorpha, with the baseline survey to take place in the summer prior to commencement of

the relevant works in each Development Area [what works], and operational surveys to commence following completion of the relevant works and to continue for [] years.

Baseline and operational monthly monitoring of aquatic bird numbers on defined sectors of the Hayle estuary at low water and high water, to provide data on operational Development Area impacts (particularly disturbance and effects of sluicing) to be undertaken every two years over a period of [] years.

Mitigation components relevant to operational activities within the developed harbour, comprising:

Ornithological mitigation to include design measures to reduce sources of operational related disturbance to birds within the Hayle Estuary & Carrack Gladden SSSI and RSPB Hayle Nature Reserve and monitoring of resultant control measures.

Sluicing regime to be determined in consultation with Environmental Consultees

Changes to the sluicing regime in the event of significant changes to invertebrate populations which are attributable to sluicing, fish habitats or aquatic bird populations.

Monitoring of saltmarsh vegetation communities at Copperhouse Pool [Wilson's Pool?] at least every 2 years post-completion of the sluice works for a period of [] years with changes to the sluicing regime in the event of deterioration attributable to sluicing.

Definition of studies to determine the likelihood of algal bloom formation in impounded waters at Penpol Creek and appropriate mitigation.

Mitigation components relevant to operational impacts on terrestrial habitats, comprising:

Management of public access and habitats on the Triangular Spit to protect and where appropriate enhance petalwort colonies there.

Post-completion follow-up monitoring surveys of bat mitigation work.

Post-completion follow-up monitoring surveys of reptile mitigation work.

Mitigation of impact on BAP bird species, linnet, song thrush and house sparrow.

Management of approximately 280 metres of new Cornish hedges.

Post-completion monitoring of public use of access paths provided to Hayle Beach.

Schedule 3
Dispute Resolution Procedure
Part 1
Appointment of the Expert

Interpretation

In this Schedule, the following expressions shall have the following meanings:

“Dispute” means a difference or dispute arising under or out of this Agreement;

“Disputes Resolution Procedure” means the procedure set out in this Schedule 3;

“Expert” means the person identified pursuant to Paragraph 3.2 of Part 1 of this Schedule 3 or such replacement as may be appointed for the time being pursuant to paragraph 4 Part 1 of this Schedule 3;

“Procedure Rules” means the rules of procedure contained in Part 2 of this Schedule 3 or as the same may be modified or amended from time to time.

Avoidance of Disputes

Any disagreement between the parties arising out of or connected with this Agreement shall unless the District Council or County Council has taken enforcement action or initiated any court action against the Developer be referred to senior representatives (board members in the case of the Developer and Chief Officers in the case of the District Council and/or the County Council) of the parties in dispute who shall (within five Working Days of a notice from any party to the other) meet to attempt in good faith to resolve the dispute amicably on a full and final basis.

If the District Council or County Council commence enforcement action or initiate court proceedings after a matter has been referred to the Dispute Resolution Procedure then the Dispute Resolution Procedure shall immediately discontinue and cease to have effect.

General

Identity of Expert

.18.7.3 Any difference or question which relates to the construction of rights and liabilities of either party or to the terms or conditions to be embodied in any deed or document appertaining thereto shall be referred to a solicitor or barrister agreed upon by the parties or (in default of agreement) within 7 days of one party serving notice on the

other calling for the appointment of an expert appointed at the request of either party by or on behalf of the Chairman from time to time of the Bar Council).

- .18.7.4 Any difference or question which relates to the value of any works or prevailing rents shall be referred to a chartered surveyor agreed upon by the parties (or in default of agreement within 7 days of one party serving notice on the other calling for the appointment of an expert appointed at the request of either party by or on behalf of the President from time to time of the Royal Institution of Chartered Surveyors).
- .18.7.5 Any difference or question which relates to methods of accounting or otherwise to matters (such as taxation) usually and properly within the knowledge of a chartered accountant shall be referred to a chartered accountant agreed upon by the parties (or in default of agreement within 7 days of one party serving notice on the other calling for the appointment of an expert appointed at the request of either party by or on behalf of the President from time to time of the Institute of Chartered Accountants in England and Wales).
- .18.7.6 If the parties shall fail to agree as to the nature of the difference or question then it shall be referred to a solicitor or barrister agreed upon by them (or in default of agreement either of them may apply to the Chairman from time to time of the Bar Council to appoint a solicitor or a barrister) to decide in relation to any such matter which of the preceding Clauses is applicable thereto and the decision of such solicitor or barrister acting as an expert shall be final and binding.

Appointment of Expert

- .18.7.7 If a Dispute arises the Dispute shall be referred and decided by the Expert acting as an independent expert but not as an arbitrator.

The Expert

The Expert shall conduct the reference and make his decision in accordance with the Procedural Rules.

In the event that the Expert shall become unable or unwilling to act either at all or on such occasions or for such periods as to render it necessary or expedient for a replacement to be appointed then the parties shall agree and appoint such replacement.

In the event of disagreement between the parties as to the necessity or expediency of appointing a replacement then the matter shall be referred to Dispute Resolution pursuant to Clause [18.12].

No person shall be eligible to act as a replacement for the person originally appointed as the Expert unless his qualifications and experience are such that he could originally have been appointed as the Expert.

If an appointment is made pursuant to paragraph 3 of Part 1 of this Schedule 3 and if the period between the date of appointment and the date that a decision ought to be made by the Expert pursuant to Procedural Rule 6.1 is less than 14 days then the parties shall be deemed to have agreed that the time limit under Procedural Rule 6.1 shall be extended by such number of days as may be necessary to give the replacement 14 days from the date of his appointment to consider such reference.

Part 2

Procedural Rules

Commencement

- 1.1 Either party may commence a reference under these rules by serving a notice upon the Expert.
- 1.2 A notice served under Procedural Rule 1.1 shall include:
 - 1.2.1 a concise summary of the nature and background of the Dispute and the issues arising;
 - 1.2.2 a statement of the relief claimed;
 - 1.2.3 a statement of any matters which the parties have already agreed in relation to the procedure for determination of the Dispute; and
 - 1.2.4 copies of all documents which have an important and direct bearing on the issues on which the claimant intends to rely (or a list of such documents if they are already in the possession of the recipient).

2 Procedure

- 2.1 The Expert shall have the widest discretion permitted by law to determine the procedure for his reaching a decision and to ensure the just expeditious and economical determination of the Dispute after such investigation as the Expert may think fit provided that the Expert shall adopt all and any procedures agreed by the parties to be appropriate for determination of a Dispute including (without prejudice to generality) the Procedural Rules.
- 2.2 Subject to the agreement of the parties the Expert may proceed to determine the Dispute on a documents-only basis.
- 2.3 The Expert shall fix the date, time and place of any meetings hearings or inspections which he deems appropriate and shall give the parties reasonable notice thereof.
- 2.4 The Expert may in advance of any hearing submit to the parties a list of questions which he wishes them to address.

2.5 All meetings hearings or inspections shall be in private unless the parties agree otherwise.

2.6 Each party may appoint representatives to appear on its behalf at a hearing subject to such proof of authority as the Expert may require.

3 Witnesses

3.1 Before any hearing the Expert may require a party to give notice of the identity and qualifications of witnesses he wishes to call and may require the parties to exchange statements of evidence to be given by the witnesses within a period to be specified by the Expert in advance of the hearing.

3.2 Any witness who gives oral evidence at a hearing may be questioned by each of the parties or their representatives under the control of the Expert and the Expert may put questions to the witness at any stage of the examination of the witness.

3.3 (Subject to Procedural Rule 3.4) the Expert may allow the evidence of a witness to be presented in written form either as a signed statement or by a duly sworn affidavit.

3.4 Either party may make representations that such a witness should attend for oral examination at a hearing and if the Expert so orders and the witness thereafter fails to attend the Expert may place such weight on the written evidence as he thinks fit or exclude it altogether.

4 Documents-Only Procedure

4.1 (Subject to Procedural Rule 6.1) if it is decided not to hold a hearing the following rules shall apply.

4.2 The Expert shall allow each party 21 days (or such other period as the Expert deems appropriate) from the date of the determination that the Dispute shall be determined on a documents-only basis pursuant to Procedural Rule 2.2) Procedural Rule 4.1 to submit representations to the Expert on his determination.

4.3 The Expert shall allow each party 10 days (or such other period not exceeding 28 days as the Expert deems appropriate) from the expiry of the period for submission of representations under Procedural Rule 4.2 to submit counter representations to the Expert.

4.4 If at the expiry of either of the periods referred to in Procedural Rules 4.2 and 4.3 no representations have been received from a particular party the Expert shall be at liberty on each occasion to refuse to accept any late representations and to reach his decision without considering them.

4.5 Without prejudice to Procedural Rules 4.2 to 4.4 if the Expert commissions independent expert evidence and intends to rely upon it in reaching his decision he shall provide a copy of such evidence to each party and allow each the opportunity to make representations upon it within 10 days.

4.6 The Expert shall notify the parties of his decision.

5 Powers of the Expert

5.1 Without prejudice to Procedural Rule 2.1 and to any powers which may be given to the Expert elsewhere in these Rules or in this Undertaking the Expert shall have the power:

5.1.1 to examine any witness or conduct an inspection of any property or thing relevant to the Dispute in the absence of any or any other representative of the parties or any other person;

5.1.2 to commission expert evidence to be prepared and adduced by a witness independent of the parties provided that (unless otherwise agreed by the parties to the Dispute) no more than two such witnesses may be called;

5.1.3 at any time to permit any party to amend any submission;

5.1.4 to continue with his determination notwithstanding a failure by any party to comply with these Rules;

5.1.5 to order a party to produce to the other party and to the Expert for inspection, and to supply copies of any documents in that party's possession custody or power which the Expert (whether following representations or on his own initiative) determines to be relevant;

5.1.6 to order a party to answer interrogatories on the application of the other party;

5.1.7 to order the inspection, preservation or storage of any data or document relevant to the Dispute under the control of any party;

- 5.1.8 to make orders authorising any sample to be taken, or any observation to be made, or (with the agreement of the parties) experiment to be tried which may, in the Expert's discretion, be necessary or expedient for the purpose of obtaining full information or evidence;
- 5.1.9 to require the parties to provide a written statement of their respective cases in relation to particular issues, and/or to provide a written answer and to give reasons for any disagreement;
- 5.1.10 to open up, revise and review any certificate, opinion, instruction, determination or decision of any person;
- 5.1.11 to take the initiative in ascertaining the facts and the law; and
- 5.1.12 to convene a hearing to determine any preliminary issue **PROVIDED THAT:**
- (a) he shall give each party not less than 10 days notice of the hearing;
 - (b) on giving the notice the Expert shall specify the procedure to be adopted at and in advance of the hearing; and
 - (c) the hearing shall be limited to the preliminary issue.

6 Decisions

- 6.1 The Expert shall make his decision as soon as possible but within 28 days (subject to an extension of 14 days at the request or with the agreement of the party who referred the Dispute or if a hearing into preliminary issues is convened pursuant to Procedural Rule 5.1.12) of the date of reference of a Dispute or within such other period as the parties may agree in writing **PROVIDED THAT** if the period for decision is other than 28 days and the Expert elects to reach his decision via a documents only procedure under Procedural Rule 4 the timescales referred to in Procedural Rule 4 shall be varied in such manner as the Expert notifies to the parties or in default of such notification in such equal proportions as shall be necessary for the relevant decision to be made in the time available.
- 6.2 The Expert shall make his decision in writing and the decision shall be dated and shall be signed by the Expert.
- 6.3 Unless the parties otherwise agree reasons for the decision and reasons for dissent shall be given by the Expert.

6.4 The Expert may allow interest on any sum which is the subject of a decision at such rates as the Expert determines to be appropriate.

6.5 (Subject to complying with the timescales in this Procedural Rule 6) the Expert may make separate final decisions on different issues at different times.

6.6 Subject to Clause 12.13.2 the Expert's decision shall be final and binding on the parties as from the date upon which it is made.

7 **Exclusion of Liability**

The Expert shall not be liable for any act or omission in connection with any reference other than in the event of conscious and deliberate wrong-doing.

8 **Notices**

8.1 Unless otherwise ordered by the Expert or agreed between the parties all notices required by these Rules shall be in writing.

8.2 A notice under Procedural Rule 1.1 shall be served by first class post or delivered by hand and all other notices and written communications shall be sent by first class post fax or delivered by hand.

8.3 Unless the intended recipient proves otherwise:

8.3.1 documents sent by first class post shall be deemed to have been received two working days after posting;

8.3.2 faxes shall be deemed to have been received at the time transmission ceases;

8.3.3 by hand deliveries shall be deemed to have been received at the time of delivery to the address stated on their face; and

8.3.4 references in these Procedural Rules to receipt of documents shall be construed accordingly.

8.4 Notices shall be effective from the time of deemed receipt and periods of time measured with reference to the giving sending or serving of a document shall be measured with reference to the time that document is received.

- 8.5 Unless otherwise ordered by the Expert or agreed between the parties, all notices and other documents received on a day which is not a working day or after 6.00pm on any working day shall be deemed to have been received on the following working day.
- 8.6 In every case in which a notice is sent to the Expert a copy thereof shall be sent contemporaneously by the same method of service to the other party.

EXECUTION PAGE