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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BB/LDC/2014/0152**

Property : **20-22 International Way (Plot 24),
Olympic Park, London E21 1GQ**

Applicant : **Manhattan Loft Gardens Limited**

Representative : **Mr Justin Kitson (Counsel)
Berwin Leighton Paisner LLP**

Respondent :

Representative :

Type of Application : **To dispense with the consultation
requirements for qualifying long
term agreements**

Tribunal Members : **Mr J P Donegan (Tribunal Judge)**

**Date and venue of
Paper Determination** : **17 December 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **31 January 2015**

DECISION

Decisions of the tribunal

The tribunal determines that the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and in Schedule 1 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”) are dispensed with in respect of the four qualifying long term agreements (“QLTAs”), referred to at paragraph 21 of this decision (“the New Agreements”). The New Agreements relate to the supply of heating and hot water to the proposed Manhattan Tower to be constructed at 20-22 International Way (Plot 240, Olympic Park, Stratford, London E20 1GQ (“the Tower”). Dispensation is granted upon the terms set out at paragraph 31 of this decision.

The application and background

1. The tribunal received an application for prospective dispensation under section 20ZA of the 1985 Act on 14 November 2014. This was accompanied by a detailed statement from Mr Mark Simmonds with four bundles of exhibits, dated 12 November 2014.
2. The application concerns the New Agreements, which the Applicant contends are QLTAs for the purposes of section 20ZA(2) of the 2002 Act.
3. The Tower is being constructed in the heart of Stratford City, adjacent to the Queen Elizabeth Olympic Park. It will consist of a hotel and commercial units on the ground to 6th floors and 248 flats on the 8th to 41st floors.
4. In 2013 the an application was submitted to the Leasehold Valuation Tribunal (“the LVT”), as it then was, for dispensation in relation to proposed connection and commercial supply agreements for the Tower (“the Original Agreements”). That application, which was dealt with under case reference LON/00BB/LDC/2013/0031, was granted in a decision dated 03 June 2013. The current application arises because the Original Agreements require amendment.
5. The Applicant is selling flats at the Tower off-plan and has already exchanged contracts to sell approximately 20 of the flats. It will not be in a position to grant the residential leases until the Tower is completed and ready for occupation.
6. Directions were issued on 19 November 2014. Paragraph 8 of the directions required the applicant to immediately send a copy of the application to each prospective leaseholder at the Tower. This was done and confirmation was supplied to the tribunal on 27 November 2014.

7. Paragraph 9 of the directions provided that any prospective leaseholder who wished to be joined as a party to these proceedings should make a written request to the tribunal by 04 December 2014. No such request has been made and none of the prospective leaseholders has submitted representations to the tribunal.
8. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

9. The hearing of the application took place during the morning of Wednesday 17 December 2014. The Applicant was represented by Mr Kitson (Counsel) and Mr Jeremy Stephen (Solicitor). On the morning of the hearing the tribunal was supplied with a helpful skeleton argument from Mr Kitson.
10. Mr Simmonds also attended the hearing, to support the application and was able to answer questions from the tribunal. He is a development manager at Creative Property and is responsible for the Tower development on a day to day basis.
11. At the start of the hearing, the tribunal queried whether the New Agreements will be QLTAs and referred Mr Kitson to the High Court's decision in ***BDW Trading Limited and Comet Square Phase 2 Block Management Co Ltd v South East Anglia Housing Ltd [2014] 1 WLR 920***. Mr Kitson explained that he was familiar with the decision but the facts could be distinguished from the current case, where contracts had already been exchanged for the sale of a number of flats. He agreed to supply the tribunal with written submissions on ***BDW Trading Ltd*** following the conclusion of the hearing. These were received during the afternoon of 17 December 2014.
12. Mr Kitson then outlined the grounds of the dispensation application and took the Tribunal through each of the New Agreements. He also referred the Tribunal to various sections in Mr Simmonds' statement. The Applicant's case is summarised below.
13. The Tower development is part of the regeneration of Stratford City, for which planning permission was granted to Stratford City Development Limite ("SCDL") in 2005. Environmental sustainability is an integral feature of the site-wide regeneration and an important element is the provision of combined cooling, heating and power plant ("CCHP Plant"), connected to a district heating network ("DHN").
14. The CCHP Plant was built by Cofely East London Energy Limited ("Cofely"). This was pursuant to the terms of a concession agreement ("the Concession Agreement") made between Cofely, SCDL and the

Olympic Development Authority (“the ODA”). The only available DHN in the vicinity of the Tower is that operated by Cofely.

15. Planning permissions for new developments at Stratford City, including that for the Tower, require connections to the DHN. In order to comply with the planning permission, the Applicant must enter into various connection and supply agreements with Cofely. It cannot obtain heating and hot water from elsewhere.
16. When it considered the 2013 application, the LVT was satisfied with the contractual provisions of the Original Agreements, the principle of supplying heating and cooling from CCHP Plant via a connection to the DHN, the environmental benefits and planning necessities of doing so and the consumer protections that would be afforded to the residential leaseholders.
17. The Original Agreements envisaged that Cofely would connect the Tower to the DHN at its perimeter and then supply hot water and heating to the entire building. This would leave the Applicant responsible for maintaining the secondary network in the Tower, by which heating and hot water would be supplied to the common parts and each of the residential units.
18. The basis upon which heating and hot water will now be supplied to new developments at Stratford City has changed since the LVT decision in June 2013. Cofely is now obliged to provide residential developments with (i) a costs free complaints route to the Energy Ombudsman, (ii) an operation and maintenance service for the secondary network of developments, (iii) contracts to supply heat directly to residential consumers, (iv) a comprehensive metering & billing service, (e) a repair/calibration/replacement service to heat metering systems, (v) a limited maintenance service to heat interface units in each residential unit and (vi) to absorb a proportion of the heat losses within the secondary network. These variations have been negotiated by the ODA and should extend customer safeguards and provide uniform and high standards for the supply of heating and hot water from the CCHP Plant.
19. The additional responsibilities being taken on by Cofely means that pricing structures have needed to be revised, as negotiated by the ODA. Further Cofely will now supply heating and hot water directly to the residential units. Pricing will be dealt with directly in the supply agreements with the residential consumers and will be regulated through price control formulae.
20. In order to reflect the changes referred to at paragraphs 18 and 19, the Applicant will need to enter into the New Agreements with Cofely. The form of three out of the four New Agreements, being the New Connection Agreement, the Master Supply Agreement and the

Common Parts Supply Agreement, have been agreed and copies of these documents were exhibited to Mr Simmonds' statement. The form of the fourth agreement, being a Cooperation Agreement, has not yet been agreed. The tribunal were supplied with a copy of the latest draft of this agreement during the afternoon of 17 December 2014.

21. The four New Agreements are:
- (a) The New Connection Agreement, which has broadened the range of services to be provided by Cofely to include "Connection Services" and "Secondary Network Services". Separate connection agreements will be used for the hotel and the residential parts of the Tower.
 - (b) The Master Supply Agreement safeguards security of supply and consumer rights an. Schedule 7 sets out the agreed "Consumer Services" to be provided by Cofely when supply heating and hot water to the residential units. These include an obligation for Cofely to maintain its registration with the Energy Ombudsman. Schedule 13 contains the pro-forma agreements to be used with the residential consumers.
 - (c) The Common Parts Supply Agreement, as the name implies, deals with the supply of heating and hot water to the (residential) common parts at the Tower. The charges for these communal supplies will be levied to the residential leaseholders, via the service charge.
 - (d) A Cooperation Agreement, by which the Applicant will enter into a direct contractual relationship with the London Legacy Development Corporation ("LLDC") and have contractually enforceable rights to ensure that LLDC performs it obligations for the benefit of the residential leaseholders.
22. The Applicant contends that the New Agreements are likely to be construed as QLTAs, within the meaning of section 20ZA(2) of the 1985 Act, as it will be obliged to make regular periodic payments to Cofely for the provision of services to the residential units (including the common parts). The residential leaseholders will be required to contribute to these payments, which therefore fall within the definition of service charges at section 18 of the 1985 Act.
23. The Applicant will be unable to comply with the consultation requirements in section 20 of the 1985 Act before entering into the New Agreements, given that work on the development has only just commenced and the residential leases are yet to be granted. It therefore seeks dispensation to avoid the possible application of the statutory cap (currently £100 per residential flat, to include any VAT).

24. It is convenient here to summarise Mr Kitson's submissions on **BDW Trading Ltd**. That case had similar facts in that it concerned a mixed use development where the First Claimant had entered into a 25-year agreement with Utilicom Limited for the supply of hot water and electricity to each of the residential flats. However it can be distinguished in that at the time the agreement was entered into there were no lessees of the residential blocks or agreements for lease.

25. Section 20ZA(2) provides:

In Section 20 and this Section ... 'Qualifying Long Term Agreement' means (subject to sub-section (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than 12 months

26. In **BDW Trading Ltd**, Deputy Judge Nicholas Strauss QC held that on a true construction of section 20ZA of the 1985 Act, the word "the landlord" denoted a person who was a landlord at the time when the agreement was concluded, and did not include someone who might become a landlord at a later stage. Accordingly he found that the agreement with Utilicom Limited was not a QLT, as there was no landlord when the agreement was formed.

27. Mr Kitson relies on the definition of "landlord in section 30 of the 1985 Act, the High Court's decision in **Paddington Basis Developments Ltd and Others v West End Quay Estate Management Ltd and Another [2010] EWHC 83 (Ch)** and the broad definitions of in section 36 of the 1985 Act. Section 36(2) provides that the words "lease" and "tenancy" include an "agreement for a lease or tenancy". Section 36(3) requires the expressions "lessor" and "lessee" and "landlord" and "tenant" to be "construed accordingly".

28. Mr Kitson contends that the New Agreements will fall within the definitions in the 1985 Act for the purposes of determining whether or not those agreements are QLTAs. There are already approximately 20 agreements for lease for residential flat at the Tower and the Applicant is therefore "the landlord" for the purposes of section 20ZA(2).

29. As to dispensation, the Applicant relies on the Supreme Court decision in **Daejan Investments Ltd v Benson [2013] 1 WLR 854**, which is well known to all landlord and tenant lawyers. The Applicant also referred to the LVT's decision in the case of **Urban Splash (Park Hill) Limited (5 March 2012) (MAN/00CG/LDC/2012/0003)**, which concerned a new housing development in Manchester where dispensation was granted for connection to a DHN operated by a monopoly supplier.

30. The Applicant contends this is an overwhelming case for prospective dispensation and relies on the following matters:
- (a) There will be no prejudice to prospective leaseholders in that none of the parties who have entered agreements for lease have objected or applied to be a party to these proceedings. They have all been supplied with advance information regarding the heating and hot water arrangements and all subsequent buyers will be able to access this information and details of the dispensation application, via an online portal. Further when flats are sold on, assignees will be aware of the heating and hot water system before buying, as details are included in the residential leases. This means that anyone acquiring a flat in the Tower will have access to information regarding the heating and hot water arrangements.
 - (b) The heating and hot water will be supplied by one of the biggest energy suppliers in Europe and the provisions of schedule 11 to the Concession Agreement give consumer protection, as do other provisions in the New Agreements. Further maintenance is provided for in the agreements, so the residential leaseholders will not face high service charge contributions for maintenance works.
 - (c) The New Agreements include formulae for charging mechanisms, which are designed to ensure that the charges will be less or equal to comparable heating systems.
 - (d) The Applicant is obliged to enter into the New Agreements in order to comply with the planning requirements for developments in Stratford City.
 - (e) The Applicant has no choice but to obtain carbon efficient energy from Cofely, as the latter has a monopoly.
 - (f) If dispensation is refused then the future residential leaseholders will have a windfall in that the statutory cap will apply. Alternatively the entire heating and hot water system will have to be redesigned and the planning process will have to start again with the risk that planning might be refused and consequential delays.
 - (g) The DHN and use of CCHP Plan “..allows future lessees of Residential Units in the Manhattan Tower to play their part in the fight against excessive carbon emissions and global warming”.

The tribunal's decision

31. The tribunal grants the application for dispensation in relation the New Agreements, subject to the following conditions:

- (a) The form of the New Connection Agreement, the Master Connection Agreement and the Common Parts Supply Agreement are to be in the same, or substantially the same, form as the drafts exhibited to Mr Simmonds' statement.
- (b) The form of the Cooperation Agreement is to be in the same, or substantially the same, form as the draft attached to this decision.
- (c) The Applicant will supply copies of this decision to all prospective leaseholders that have exchanged contracts to buy residential flats the Tower.
- (d) The Applicant will supply copies of this decision to all prospective buyers of residential flats at the Tower.

Reasons for the tribunal's decision

- 32. The tribunal is satisfied that the New Agreements are QLTA's for the reasons advanced by Mr Kitson. This case can be distinguished from ***BDW Trading Ltd***, as approximately 20 agreements for lease have been entered into with prospective buyers. It follows that the Applicant is "the landlord" for the purposes of section 20ZA(2) of the 1985 Act and the statutory consultation rules apply to the Tower. The exemption at regulation 3(1)(d) of the 2003 Regulations does not apply, as the term of the New Agreements exceeds 5 years.
- 33. It is well established that the tribunal has jurisdiction to grant prospective dispensation for QLTA's that have not yet been entered into (see ***Auger and Others v London Borough of Camden LRX/81/2007***). The Tribunal is satisfied that it is reasonable to dispense with the statutory consultation requirements for the reasons advanced by the Applicant, as summarised at paragraph 30 above. There will be no prejudice to the prospective leaseholders and the Applicant has no real choice but to enter into the New Agreements, given the planning policy for new developments at Stratford City. Further, once the flats are completed and sold the residential leaseholders will still have the protection of section 19 of the 1985 Act and will be able to seek a determination of heating and hot water costs that are recovered via their service charges, pursuant to section 27A.

Name: Tribunal Judge Donegan **Date:** 31 January 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and

- (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
 - (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
 - (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
- (2) In section 20 and this section –
 “qualifying works” means works on a building or any other premises, and
 “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
- (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.

- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord
 - (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
 - (b) to obtain estimates for the proposed works or agreements,
 - (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section –
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provisions for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 30

In the provisions of this Act relating to service charges –
“landlord” includes any person who has a right to enforce payment of a service charge;

“tenant” includes –

- (a) a statutory tenant, and
- (b) where the dwelling or part of it is sub-let, the sub-tenant.

Section 36

- (1) In this Act “lease” and “tenancy” have the same meaning.
- (2) Both expressions include –
 - (a) a sub-lease or sub-tenancy; and
 - (b) an agreement for a lease or tenancy (or sub-lease or sub-tenancy).
- (3) The expressions “lessor” and “lessee” and “landlord” and “tenant”, and references to letting, to the grant of a lease or to the covenants or term, shall be construed accordingly.

The Service Charges (Consultation Requirements) (England) Regulations 2003

Regulation 3(1)

- (1) An agreement is not a qualifying long term agreement -
 - (a) if it is a contract of employment' or
 - (b) if it is a management agreement made by a local housing authority and -
 - (i) a tenant management organisation' or
 - (ii) a body established under section 2 of the Local Government Act 2000;
 - (c) If the parties to the agreement are -
 - (i) a holding company and one or more of its subsidiaries; or
 - (ii) two or more subsidiaries of the same holding company
 - (d) If -
 - (i) when the agreement is entered into, there are no tenants of the building or other premises to which the agreement relates; and
 - (ii) the agreement is for a term not exceeding five years.

Regulation 5

- (1) Subject to paragraphs (2) and (3) , in relation to qualifying long term agreements to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA are the requirements specified in Schedule 1.
- (2) Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of section 20 and 20ZA, as regards the agreement, are the requirements specified in Schedule 2.
- (3) In relation to a RTB tenant and a particular qualifying long term agreement, nothing in paragraph (1) or (2) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

Schedule 1

Notice of intention

1. - (1) The landlord shall give notice in writing of his intention to enter into the agreement -
 - (a) to each tenant; and
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall -
 - (a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters can be inspect;

- (b) state the landlord's reasons for considering it necessary to enter into the agreement;
 - (c) where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;
 - (d) invite the making, in writing, of observations in relation to the proposed agreement; and
 - (e) specify
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period the name of a person from who the landlord should try to obtain an estimate in respect of the relevant matters.

Inspection of description of relevant matters

- 2.-(1) Where a notice under paragraph 1 specifies a place and hours for inspection –
- (a) the place and hours so specified must be reasonable; and
 - (b) a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed agreement

3. Where, within the relevant period, observations are made in relation to the proposed agreement by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

DATED

2014

LONDON LEGACY DEVELOPMENT CORPORATION
as LLDC

and

MANHATTAN LOFT GARDENS LIMITED

CO-OPERATION AGREEMENT

relating to
arrangements for the provision of community energy services to Plot N24, Manhattan Loft
Gardens, Olympic Park, London

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DATED

2014

PARTIES

- (1) **LONDON LEGACY DEVELOPMENT CORPORATION** of Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ ("**LLDC**"), which expression shall include its statutory successors in title and permitted assigns and transferees); and
- (2) **MANHATTAN LOFT GARDENS LIMITED** of PO Box 119, Martello Court, Admiral Park, St Peter Port, Guernsey GY1 3HB ("**Manhattan Loft**", which expression shall include its statutory successors in title and permitted assigns and transferees).

BACKGROUND

- (A) This Agreement is supplemental to a concession agreement made between the Olympic Delivery Authority ("**ODA**"), Stratford City Developments Limited ("**SCDL**") and Cofely East London Energy Limited (the "**Concessionaire**") dated 11 April 2008 as amended and restated on 11 June 2014 pursuant to which the Concessionaire agreed to design, build, finance, own and operate a community energy relevant to service the Olympic Park and Stratford City (the "**Concession Agreement**").
- (B) ODA's interest in the Concession Agreement was transferred from the ODA to LLDC pursuant to a statutory transfer scheme dated [●] (the "**Transfer Scheme**").
- (C) LLDC and Manhattan Loft acknowledge that in light of LLDC's role as one of the Employers under the Concession Agreement there is scope for the Parties to co-operate for their mutual benefit. LLDC and Manhattan Loft have, therefore, agreed to enter into this Agreement.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, terms and expressions shall have the meanings set out in the Connection Agreement or Supply Agreement (as the case may be):

"**Commercial Supply Agreement**" has the meaning given in the Supply Agreement.

"**Commercial Unit**" has the meaning given in the Connection Agreement.

"**Common Parts Supply Agreement**" has the meaning given in the Supply Agreement.

"**Community Energy Network**" has the meaning given in the Connection Agreement.

"**Connection Agreement**" means an agreement entered into between Manhattan Loft and the Concessionaire for connection of the Development or part thereof to the Community Energy Network.

"**Customer**" means the individual, business, organisation or other body who:

- (a) consumes Energy Services to Premises under a Supply Agreement or Subsidiary Supply Agreement; or
- (b) is entitled to services to a Development under a Connection Agreement.

"Development" means the construction of the Manhattan Tower on the Development Site including residential units and a hotel together with all ancillary service areas, access roads, landscaping works and other facilities.

"Development Site" means Plot N24 at Stratford City, London.

"Dwelling" has the meaning given in the Connection Agreement.

"Employer" means jointly LLDC and SCDL as counterparties to the Concessionaire under the Concession Agreement.

"Energy Services" means the provision of Heating Services by the Concessionaire to the Customer.

"Funder" means any party providing finance to Manhattan Loft or MLG Group in respect of the financing of the Development.

"Governance Functions" means, to the extent LLDC has rights opposite the Concessionaire pursuant to the Concession Agreement, including without prejudice to the foregoing generality the following rights:

- (a) to require the provision by the Concessionaire of Energy Services to the Development Site;
- (b) to require the Concessionaire to reserve capacity from the Community Energy Network for the benefit of the Development;
- (c) to monitor the Concessionaire's performance in respect of the provision of Energy Services;
- (d) to monitor compliance by the Concessionaire with carbon emission requirements; and
- (e) to provide for continuity of Energy Services in the event of the termination or expiry of the Concessionaire's employment under the Concession Agreement,

LLDC exercises those rights for the benefit of Manhattan Loft.

"Heating Services" has the meaning given in the Connection Agreement.

"Hotel Tenant/Operator" means an operator or tenant of the hotel within the Manhattan Tower.

"Independent Heat Customer Protection Scheme" means a voluntary scheme for the protection of heat consumers as established and governed by heat industry participants, consumers and government representatives.

"Indirect Loss" means any loss of profit or revenue, loss of opportunity, loss of contract, loss of goodwill, the cost of obtaining any new financing or maintaining any existing financing (including the making of any scheduled or other repayment

or prepayment of debt and the payment of any other costs, fees or expenses incurred in connection with the obtaining or maintaining of financing).

"Law" means all applicable laws, regulations, regulatory requirements and codes of practice of any relevant jurisdiction, as amended and in force from time to time.

"MLG Group Company" means Manhattan Loft, its parent undertaking and the subsidiary undertakings of its parent undertaking and its associated companies.

"New Concession Agreement" means any agreement entered into by the Employer in replacement of the Concession Agreement, as contemplated under the Concession Agreement.

"New Concessionaire" means any counterparty to the Employer under a New Concession Agreement.

"Party" means LLDC or Manhattan Loft, as the context requires and **"Parties"** means both LDC and Manhattan Loft.

"Premises" means any Dwelling or Commercial Unit.

"Purchaser" means a purchaser of all of Manhattan Loft's interest in the Development.

"Relevant Interest" means a property right in the whole of the Development Site.

"Residential Supply Agreement" has the meaning given in the Supply Agreement.

"Subsidiary Supply Agreement" means a Residential Supply Agreement; and/or a Commercial Supply Agreement, and/or a Void Supply Agreement and/or a Common Parts Supply Agreement.

"Supply Agreement" means an agreement to be entered into between a Customer and the Concessionaire for the supply of Energy Services to the boundary of the Development Site.

"Void Supply Agreement" has the meaning given in the Supply Agreement.

"Working Day" means each day (other than a Saturday or Sunday or Public or Bank Holiday) on which clearing banks in England are open for the transaction of ordinary business.

1.2 Interpretation

1.2.1 Except where the context expressly requires otherwise, a reference in this Agreement to a Clause, paragraph or Schedule is a reference to a clause, paragraph or schedule to this Agreement.

1.2.2 The headings in this Agreement are for ease of reference only and do not affect its interpretation.

1.2.3 Where the context so requires words importing the singular meaning only also include the plural and vice versa.

1.2.4 Notwithstanding anything else in this Clause 1.2, any reference to a person, company or entity of any kind shall include its successors, assignees and transferees.

2 **LLDC OBLIGATIONS**

2.1 LLDC covenants with Manhattan Loft that it will:

2.1.1 comply with the terms of the Concession Agreement;

2.1.2 use reasonable endeavours to procure that the Concessionaire complies with the terms of the Concession Agreement;

2.1.3 notify Manhattan Loft in writing promptly upon any termination of the Concession Agreement;

2.1.4 as soon as reasonably practicable provide Manhattan Loft with copies of any notices served on LLDC under the Concession Agreement relating to the subject matter of this Agreement; and

2.1.5 seek to resolve matters arising under this Agreement expeditiously.

2.2 In the event that Manhattan Loft reasonably incurs any costs directly as a result of Manhattan Loft complying with a request for assistance from LLDC in relation to LLDC's obligations under the Concession Agreement, to the extent that such cost is not incurred by Manhattan Loft in complying with its obligations under this Agreement LLDC shall reimburse the reasonable cost to Manhattan Loft within ten (10) Business Days of demand.

2.3 LLDC covenants to consult with Manhattan Loft in advance of any variations or amendments to the Concession Agreement in so far as it affects or impacts upon the Development provided that LLDC shall have discharged this obligation if (a) having taken all reasonable steps, it is unable to locate Manhattan Loft or (b) Manhattan Loft does not engage in such consultation.

3 **MANHATTAN LOFT'S OBLIGATIONS¹**

3.1 Manhattan Loft covenants with LLDC that it will:

3.1.1 notify LLDC as soon as reasonably practicable where it becomes aware of any matter that might affect or impact on LLDC's obligations under this Agreement; and

3.1.2 seek to resolve matters arising under this Agreement expeditiously.

4 **CO-OPERATION**

4.1 The Parties agree to co-operate and act reasonably, and in good faith with each other in relation to all matters arising out of this Agreement.

4.2 Subject to any confidentiality restrictions that may apply, the Parties agree to provide any information reasonably required by the other to comply with their respective obligations under this Agreement.

¹ We have not included a provision that MHL will not put LLDC in breach of the Concession Agreement. As the Development Site is not within the Exclusivity Zone we could not see how MLC could put LLDC in breach.

4.3 Each Party shall ensure that any information supplied by it under this Agreement shall be true and accurate to the best of its knowledge and belief.

4.4 Neither Party shall be under any obligation to perform the other Party's obligations under this Agreement.

5 **INDEMNITY**

5.1 Subject to the provisions of Clause 5.4, Manhattan Loft shall be responsible for and shall indemnify and keep indemnified LLDC against all liability incurred by LLDC toward any other party, as a result of any breach by Manhattan Loft of its obligations under this Agreement.

5.2 Subject to the provisions of Clause 5.4 LLDC shall be responsible for and shall indemnify and keep indemnified Manhattan Loft against all liability incurred by Manhattan Loft toward any other party, as a result of any breach by LLDC of its obligations under this Agreement.

5.3 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to Clause 5.1 and Clause 5.2.

5.4 Neither Party shall be liable to the other Party whether pursuant to any provision of this Agreement (including any indemnity), by way of damages for breach of contract, in tort, for breach of statutory duty, equity or under any other legal theory for any Indirect Loss, provided that the aforesaid exclusion and waiver shall not apply to, and each of the Parties shall accordingly remain entitled to Indirect Losses from the other to the extent that the same relate to a Party's liability in case of fraud, fraudulent misrepresentation or wilful misconduct, or indemnities for fines and penalties for violation of any applicable law.

6 **LLDC OBLIGATIONS REGARDING ENERGY SERVICES**

6.1 The Parties acknowledge that, at the date of this Agreement:

6.1.1 the provision of Energy Services as provided by the Concessionaire under the Concession Agreement is not an industry which is subject to statutory or other official mandatory regulation; and

6.1.2 the terms of the Concession Agreement entitle the Employer to perform some of the governance functions that would be performed by a regulator if the provision of Energy Services as provided by the Concessionaire under the Concession Agreement were subject to statutory or other official mandatory regulation.

6.2 Accordingly, until such time as a system of statutory or other official mandatory regulation becomes applicable to the provision of the Energy Services LLDC will as joint Employer under the Concession Agreement (and so far as it is reasonably able in circumstances where it is not the sole Employer under the Concession Agreement) procure that the Governance Functions under the Concession Agreement, so far as they relate to or affect the Development, are duly and properly exercised.

7 **CONTINUITY OF SUPPLY**

7.1 If the Concession Agreement is terminated or retendered or otherwise expires LLDC shall enforce all rights it may be entitled to under the Concession Agreement to ensure continuity of Energy Services to Customers for indefinite duration and

otherwise use ensure such continuity of Energy Services including without prejudice to the foregoing:

- (a) procure to the extent entitled to do so, that the Concessionaire novates the Connection Agreement(s) and Supply Agreement(s) and any Subsidiary Supply Agreement(s) to LLDC or its nominee or any New Concessionaire if LLDC or such nominee or New Concessionaire wishes to take a novation of such Connection Agreement(s) and Supply Agreements and Subsidiary Agreements; or
- (b) procure that a new operator (including any New Concessionaire) is appointed to provide Energy Services to Customers on terms which incorporate performance levels and consumer protections that are, in respect of each performance level and consumer protection, the more onerous of (i) the relevant protection applicable under the Connection Agreement(s) and Supply Agreements and Subsidiary Supply Agreements as between the Customer and the Concessionaire existing prior to the date of such termination, re-tendering or expiry or (ii) the relevant protection contained in the Independent Heat Customer Protection Scheme (if in existence at the time of termination or re-tendering or expiry (as the case may be) or (iii) the relevant protection under any Law.

7.2 Where Clause 7.1(a) and Manhattan Loft is the counterparty to any Connection Agreement or Supply Agreement it shall consent to such novation.

7.3 Where Clause 7.1(b) applies Manhattan Loft shall enter into any:

- (a) new Connection Agreement(s) or (where the Concession Agreement no longer exists) connection agreement(s), provided that such arrangements leave Manhattan Loft in no worse a position than when it was the counterparty under the Connection Agreement(s); and
- (b) new Supply Agreement(s) or (where the Concession Agreement no longer exists) supply agreements, to the extent the new arrangements envisage supply arrangements equivalent to those under the Supply Agreement(s) and provided that such arrangements leave Manhattan Loft in no worse a position than when it was the counterparty under the Supply Agreement(s).

8 **TERMINATION**

8.1 Subject to Clause 8.2 and Clause 8.3, the rights and obligations set out in this Agreement shall continue in force, in relation to each Party, until the earlier of:

- (a) the expiry or termination of the Concession Agreement and for so long thereafter as there remain any obligations to be performed, or any contingent liability or contingent benefits, under the Concession Agreement; or
- (b) termination by Manhattan Loft of all Connection Agreements and/or Supply Agreements at the Development.

8.2 This Agreement may not be terminated otherwise than pursuant to Clause 8.1. Termination under Clause 8.1 shall not prejudice any rights and liabilities of the Parties which accrued prior to the date of such termination.

8.3 In the event that the Community Energy Network is retendered under the Concession Agreement or otherwise, this Agreement shall continue in full force and effect with respect to the New Concession Agreement (subject to such amendments as the Parties acting reasonably may agree are necessary in relation to the New Concession Agreement) until the earlier of:

- (a) the expiry or termination of the New Concession Agreement and for so long thereafter as there remain any obligations to be performed, or any contingent liability or contingent benefits, under the New Concession Agreement; or
- (b) or termination of the Connection Agreement and/or Supply Agreement by Manhattan Loft,

and the New Concession Agreement and New Concessionaire shall thereafter be deemed to be the "Concession Agreement" and the "Concessionaire" for the purposes of this Agreement.

9 **PARTIAL INVALIDITY**

9.1 If at any time any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

10 **TRANSFER**

10.1 Manhattan Loft shall not assign, novate, or otherwise transfer the whole or part of this Agreement save:

- 10.1.1 to a purchaser of a Relevant Interest or part thereof;
- 10.1.2 to any MLG Group Company entitled to a Relevant interest or part thereof;
- 10.1.3 to any Hotel Tenant/Operator entitled to a Relevant Interest or part thereof; or
- 10.1.4 by way of charge in favour of a Funder;

provided that in each case the relevant party referred to in Clauses 10.1.1 to 10.1.3 (inclusive) agrees to enter into a Deed of Adherence with LLDC in such form as is annexed to this Agreement in Schedule 1 (subject to such amendments as are agreed between the parties).

10.2 Where such assignment, novation or transfer relates to part of a Relevant Interest such Deed of Adherence shall relate to the part of the Development which is subject to the Relevant Interest (the "**Relevant Part**") and if there is more than one Relevant Interest in the same Relevant Part then Manhattan Loft shall elect only one of them to enter into a Deed of Adherence and in the event that Manhattan Loft does not elect, then it shall be the first Relevant Interest to arise.

10.3 On delivery of a Deed of Adherence to LLDC, Manhattan Loft shall be released from its obligations under this Agreement in respect of the Relevant Part provided that Manhattan Loft shall not thereby be released from any liability for any breach of its obligations under this Agreement prior to such disposal or to any breach of any of Manhattan Loft's remaining obligations under this Agreement.

- 10.4 LLDC acknowledges that any assignee, novatee or transferee entering into a Deed of Adherence pursuant to Clause 10.1 shall be entitled to rely on the rights granted to Manhattan Loft in this Agreement in so far as they relate to interest so assigned, novated or transferred.
- 10.5 LLDC shall not assign, novate or otherwise transfer the whole or part of this Agreement, save:
- 10.5.1 to the GLA or any other person or body replacing the GLA, or any person or body assuming the obligations imposed upon the London Development Agency by the terms of the London Development Agency (Lower Lea Valley, Olympic and Legacy) Compulsory Purchase Order 2005 to develop the Site or part thereof (as defined in the Concession Agreement) for the purposes set out in that Compulsory Purchase Order;
- 10.5.2 to any organisation subsequently assuming its rights, powers and obligations; or
- 10.5.3 with the prior written consent of Manhattan Loft (such consent not to be unreasonably withheld or delayed),
- provided that LLDC may not assign, transfer (including by way of statutory transfer) or novate its interest under this Agreement without a simultaneous transfer or novation of its interest under the Concession Agreement.
- 10.6 In the event of an assignment, novation or transfer or disposal referred to in Clause 10.5 LLDC shall procure that the third party to whom the assignment, novation, transfer or disposal is made enters into an agreement with Manhattan Loft on the same terms and conditions as this Agreement on the date of such assignment, transfer or novation ("**Replacement Agreement**").
- 10.7 On delivery to Manhattan Loft of the Replacement Agreement referred to in Clause 10.6, LLDC shall be released from its obligations under this Agreement but only to the extent the third party who has entered into the Replacement Agreement assumed the obligations of LLDC opposite Manhattan Loft (and provided that LLDC shall not thereby be released from any liability for any breach of its obligations under this Agreement prior to such disposal).

11 **CONFIDENTIALITY**

Save as may reasonably be necessary for the proper performance by either Party of its obligations under this Agreement, or as may be required by law, neither Party shall at any time for any reason disclose to any person or otherwise make use of any confidential information which relates to the other Party without the prior written consent of that other Party.

12 **DISPUTE RESOLUTION**

- 12.1 In the event of any difference or dispute arising between the Parties arising out of or in connection with this Agreement (or any other agreement expressly made subject to the dispute resolution process in this Agreement) the Parties shall first use their respective reasonable endeavours to resolve such difference or disputes. In the first instance, the relevant senior management representative of each Party to the dispute shall meet within five Working Days to discuss and endeavour to resolve the difference or dispute.
- 12.2 The relevant senior management representatives for each party will be:

on behalf of LLDC, [●]; and

on behalf of Manhattan Loft, [●],

or their appointed deputies or any replacement senior management representative notified to the other Party in writing from time to time.

12.3 In the event the difference or dispute referred to senior management is not resolved within five Working Days of referral any Party to the dispute may refer the matter to the Chief Executives of each Party (or such person of appropriate standing as it nominates) (or their appointed deputies) who will meet within ten Working Days of referral and use their reasonable endeavours to resolve the difference or dispute.

12.4 In the event that any difference or dispute referred to the Chief Executives is not resolved within ten Working Days of the referral, the Parties may refer the difference or dispute to legal proceedings.

12.5 None of the dispute resolution procedures provided for in this Clause 12 shall impose any precondition on any Party or otherwise prevent or delay any Party from commencing proceedings in any court of competent jurisdiction to obtain either:

12.5.1 an order (whether interlocutory, interim or final) restraining the other Party from doing any act or compelling any other party to do any act; or

12.5.2 summary judgment pursuant to CPR Part 24 for a liquidated sum.

13 **NOTICES**

13.1 A notice under or in connection with this Agreement (a "**Notice**"):

13.1.1 shall be in writing;

13.1.2 shall be in the English language; and

13.1.3 shall be delivered personally by hand to the Party due to receive the Notice to the address specified in Clause 13.2 or to another address or person specified by that Party by written notice to the other Party received before the Notice was despatched.

13.2 The address referred to in Clause 13.1 is:

in the case of LLDC:

Address: Level 10
1 Stratford Place
Montfichet Road
London E20 1EJ

Marked for the attention of the Director;

in the case of Manhattan Loft:

Address: PO Box 119
Martello Court

Admiral Park
St Peter Port
Guernsey
GY1 3HB

Marked for the attention of [General Counsel].

13.3 Unless there is evidence that it was received earlier, a Notice is deemed duly given when left at the address referred to in Clause 13.2.

14 **GENERAL**

14.1 A variation of a Clause of this Agreement (excluding the schedules) is valid only if it is in writing and signed by a duly authorised representative of each Party.

14.2 A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents a further exercise of the right or remedy or the exercise of another right or remedy.

14.3 No provision of this Agreement creates a partnership between the Parties or makes a Party the agent of the other Party for any purpose. A Party has no authority to bind, to contract in the name of or to create a liability for the other Party in any way or for any purpose.

14.4 At no time during the performance of this Agreement shall Manhattan Loft or its employees or other representatives be considered to be employees or agents of LLDC, nor shall LLDC or its employees or other representatives be considered to be employees or agents of Manhattan Loft even when designated to receive any training or assisting in the performance of this Agreement.

14.5 If any provision of this Agreement is found to be invalid or unenforceable under any applicable law, then such provision shall be inoperative to the extent necessary to achieve compliance with such law. Such provision to the extent that is not invalid or unenforceable and the remaining provisions of this Agreement shall continue to be valid and binding upon the parties and of like effect as though the inoperative portion of such provision were not included therein.

14.6 This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original, but all the counterparts together constitute the same document.

15 **LIABILITY**

15.1 Manhattan Loft does not exclude or restrict its liability for death or personal injury caused by its negligence or that of its agents or sub-contractors. Subject to that, neither Manhattan Loft nor any of its employees, agents or sub-contractors will ever be liable under or in connection with this Agreement to LLDC howsoever arising from:

15.1.1 Indirect Loss; or

15.1.2 loss caused by strikes or industrial disputes involving employees of any third party, natural disaster or compliance with any law or governmental order, rule, regulation or direction.

15.2 Without prejudice to Clause 15.1, in no circumstances will the liability of Manhattan Loft to LLDC howsoever arising exceed [●]pounds (£[●]) in the aggregate.

15.3 LLDC does not exclude or restrict its liability for death or personal injury caused by its negligence or that of its agents or sub-contractors. Subject to that neither LLDC nor any of its employees, agents or sub-contractors will ever be liable under or in connection with this Agreement to Manhattan Loft howsoever arising from:

15.3.1 Indirect Loss; or

15.3.2 loss caused by strikes or industrial disputes involving employees of any third party, natural disaster or compliance with any law or governmental order, rule, regulation or direction.

15.4 without prejudice to Clause 15.3.1, in no circumstances will the liability of LLDC to Manhattan Loft howsoever arising exceed [●] ([●]) in the aggregate.

16 **LAW**

This Agreement shall be governed by and construed in accordance with English law and be subject to the exclusive jurisdiction of the courts of England and Wales.

17 **THIRD PARTY RIGHTS**

The Parties do not intend any third party to have the right to enforce any provision of the Agreement save where any such third party is an assignee of rights under the Agreement and such assignment is in accordance with Clause 10 (*Transfer*).

IN WITNESS whereof this Agreement has been executed by the Parties as a deed and is intended to be and is hereby delivered on the date first above written.

EXECUTED as a DEED by)
LONDON LEGACY DEVELOPMENT)
CORPORATION)
by applying its seal in the presence of)
an Authorised Representative:)

Signed by Authorised Signatory

Name of Authorised Signatory

Executed as a deed by **MANHATTAN**)
LOFT GARDENS LIMITED [])
acting by:)

Director

Director/Secretary

**Schedule 1
DEED OF ADHERENCE**

DATE

PARTIES

- (1) [] (incorporated and registered in England and Wales under company registration number []), the registered office of which is at [] (the "**LLDC**")

[LLDC or its successor in title who is to take the benefit of the covenants from the Covenantor.]²

- (3) [] (incorporated and registered in England and Wales under company registration number []), the registered office of which is at [] (the "**Transferor**"); and

[The person disposing of its Relevant Land to the Covenantor.]³

- (4) [] (incorporated and registered in England and Wales under company registration number []), the registered office of which is at [] (the "**Covenantor**").

[A prospective purchaser/purchaser of the Relevant Land from the Transferor.]⁴

RECITALS

- (A) Pursuant to Clause 10.1 of the Co-operation Agreement, upon disposal of a Relevant Interest, the Transferor will be released from all obligations, undertakings, covenants and conditions under the Co-operation Agreement (in relation to that Relevant Interest) but without prejudice to the rights of the other party in relation to any antecedent breach of those obligations or covenants provided that it has procured from its assignee in favour of the other party a deed of adherence to observe and perform the terms of the Co-operation Agreement so far as they remain to be performed.
- (D) This Deed is supplemental to the Co-operation Agreement and is entered into to satisfy the requirement of Clause 10.1 of the Co-operation Agreement.

OPERATIVE PROVISIONS

1 INTERPRETATION

- 1.1 Save where provided otherwise words and expressions used in this Deed shall have the meaning assigned in the Co-operation Agreement.

² Drafting instructions only. To be deleted.

³ Drafting instructions only. To be deleted.

⁴ Drafting instructions only. To be deleted.

1.2 Save where provided otherwise words and expressions used in the Transfer shall have the meanings assigned in this Deed.

1.3 In this Deed the following words and expressions shall have the following meanings:

"Co-operation Agreement" means the agreement dated [] 2014 and made between the London Legacy Development Corporation (1) and Manhattan Loft Gardens Limited (2);

"Deed" means this deed of covenant;

"Property" means the land edged red on the plan annexed hereto;

"Transfer" means the transfer dated [] between (1) the Transferor and (2) the Covenantor in respect of the Property.

1.4 Words in this Deed denoting the singular include the plural meaning and vice versa.

1.5 The clause and paragraph headings in this Deed shall not affect its construction or interpretation.

1.6 When at any time any of the parties to this Deed are two or more persons, the obligations in this Deed expressed or implied to be made with or by that party are to be treated as made with or by the persons comprising such party jointly and severally.

1.7 References to the LLDC and Covenantor shall (except where the contrary is expressly provided) include their respective successors in title.

2 COVENANTOR'S COVENANT

The Covenantor covenants with the LLDC that the Covenantor will at all times observe and perform the obligations, undertakings, covenants and conditions contained in the Co-operation Agreement on the part of the Transferor in respect of and to the extent that they relate to the Property (whether running with the land or of a purely personal or collateral nature).

3 RELEASE

3.1 The Transferor is released from all obligations, undertakings, covenants and conditions under the Co-operation Agreement in relation to the Property but without prejudice to the rights of LLDC in relation to any antecedent breach of those obligations, undertakings, covenants or conditions or to any breach of any of the Transferor's remaining obligations, undertakings, covenants and conditions under the Co-operation Agreement.

3.2 LLDC is released from all obligations, undertakings, covenants and conditions to the Transferor under the Co-operation Agreement in relation to the Property but without prejudice to the rights of the Transferor in relation to any antecedent breach of those obligations, undertakings, covenants and conditions.

4 FURTHER RELEASE

4.1 The Covenantor will upon the transfer of a Relevant Interest in the Property subject to complying with clause 4.2 be released from all obligations, undertakings, covenants and conditions under this Deed in relation to the Relevant Interest but

without prejudice to the rights of LLDC in relation to any antecedent breach of those obligations, undertakings, covenants or conditions.

4.2 In order to benefit from the release in clause 4.1, upon the transfer of a Relevant Interest the Covenantor must procure from its assignee in favour of LLDC a direct covenant in the form of this Deed to observe and perform the obligations of the Co-operation Agreement so far as they remain to be performed.

5 **GOVERNING LAW**

This Deed shall in all respects be governed by English law and any dispute or difference arising under this Deed shall be subject to the exclusive jurisdiction of the English courts.

Delivered as a deed on the date of this document.

EXECUTION PAGE

Executed as a deed by [] acting)
by:)
)

Director

Director/Secretary

Executed as a deed (but not delivered until)
the date hereof) by affixing the common)
seal of in the presence of:)
)

.....
Authorised signatory