

**HEADS OF TERMS FOR A DEED OF VARIATION OF THE DEVELOPMENT AGREEMENT DATED 9<sup>th</sup> APRIL 2010 MADE BETWEEN ONE NORTHEAST, THE COUNCIL OF THE BOROUGH OF DARLINGTON AND KEEPMOAT LIMITED, CECIL M YUILL LIMITED AND COMMERCIAL ESTATES GROUP LIMITED**

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**XXX** – detailed matters to be negotiated through Deed of Variation

**1. PARTIES**

- 1.1 All references to TVR to be removed
- 1.2 Amendment required to reflect the transfer of assets from ONE NORTHEAST to Homes and Communities Agency (HCA)
- 1.3 The definition of Agency Representative will be amended to:
  - 1.3.1 Alan Glew will be the representative for the Council of the Borough of Darlington
  - 1.3.2 Chris Munro will be the representative for The Homes and Communities Agency

**2. DEFINITIONS**

- 2.1 The definition of Anticipate Percentage Profit shall be:
  - 2.1.1 15% in respect of any commercial parts of the Development and 12% in respect of any residential parts of the Development of 'A' as calculated under paragraph 3.1(d) of Schedule 15
- 2.2 The definition of the Development Appraisal should be amended to the new baseline site wide Development Appraisal with a Phase Development Appraisal for each of the relevant phases to be respectively annexed at Appendix 12.
  - 2.2.1 Prior to drawdown of land under Building Licence the Developer will be required to demonstrate site wide scheme viability and phase viability for the relevant phase to be drawn down. If site wide viability is not viable and the relevant phase is viable, the relevant phase may be drawn down if the Committee agrees this is acceptable.
- 2.3 The definition of final longstop date should be a specified period of time from the commencement of each phase and in any event by the dates for each phase as follows:

- 2.3.1 Phase 1 (c270 residential dwellings, local centre; Development Cells A, C, D, E / EZ1 and D) and business incubator (within Cell 2 / EZ2): 30 June 2020
- 2.3.2 Phase 2a (Development Cells B / EZ2 and F): 30 June 2025
- 2.3.3 Phase 2b (Commercial: Development Cells 1, 2 / EZ3 and 3): **Fixed Date to be agreed on completion of Phase 1 viability at end of March 2012.**
- 2.4 The definition of Financial Viability Pre-Condition should relate to the site wide viability as well as the viability of the respective phases.
- 2.5 The definition for the Initial Longstop Date should be an 'absolute' date relating to the commencement of a phase. This should be 6 months from the satisfaction date whereby the Agencies make the land available for development and in any event by the dates for each phase as follows:
  - 2.5.1 Phase 1 (circa 270 residential dwellings; local centre; Development Cells A, C, D, E / EZ1 and D) and business incubator (within Cell 2 / EZ2): 31 December 2013.
    - 2.5.1.1 Specifically, the local centre within Development Cell E should commence by 31 July 2014.
  - 2.5.2 Phase 2a (Development Cells B / EZ2 and F): 31 December 2019
  - 2.5.3 **Phase 2b (Commercial: Development Cells 1, 2 / EZ3 and 3): Fixed Date in any event, which will be calculated as 3 years from the anticipated CPO General Vesting Declaration.**
- 2.6 A new definition of masterplan and revised masterplan pre-condition is not required as the Deed of Variation will not be signed until a revised masterplan is agreed.
- 3. **PRE-CONDITIONS**
  - 3.1 The financial viability pre-condition needs to reflect the site wide viability of the comprehensive scheme as well as respective phases so parties understand the implications of phase draw down on viability of the comprehensive scheme.
  - 3.2 NEDL Precondition: If the area of land contained in the NEDL lease is required for aesthetic and landscaping purposes of the development, the council will best endeavour to reduce the area leased by NEDL from the Council. The substation is to remain on site with no new provision required. The council have confirmed this does not need to be a pre-condition as it is not essential to the delivery of the scheme.
  - 3.3 Permanent Access Pre-Condition not required.

## 4. DEVELOPMENT

### 4.1 In relation to drawdown of building licences:

4.1.1 In respect of the Residential Building Licence(s) Keepmoat and Yuill will be party to the Residential Building Licences granted to either developer in order to guarantee the development obligations of the party undertaking the development. CEG will not be party to any such Residential Building Licence(s) and will not be obliged to guarantee the development obligations of Keepmoat and Yuill.

4.1.2 In respect of the Commercial Building Licence(s), Keepmoat and Yuill limited will not be obliged to guarantee the development obligations of CEG. Prior to drawdown of the Commercial Building Licence CEG will be required to provide confirmation that a pre-let is secured which covers the anticipated build cost and 'proof of funding' in the form of a letter from the lender. The form of guarantee require both a parent company guarantee as a first priority call and a bank guarantee as a second priority call in the event that there should be a default by CEG.

## 5. PLANNING

5.1 The Developer will be required to secure outline planning permission for the site and detailed planning permission of the relevant phases. Clause 2.2, Schedule 1 and 14 will need to be amended to reflect this planning process.

## 6. LAND RECEIPTS

6.1 This obligation will take the form of a staged land receipt paid to the Council, which the Council will use to undertake CPO acquisitions and procure / relocate a new depot which satisfies its needs. The consortium will still be obligated to clear and remediate the depot site as part of the development.

6.2 The staged land receipt will be paid to the Council in three instalments:

6.2.1 £1.2million to be paid within 3 years from drawdown of land for Phase 1.

6.2.2 £2.5million to be paid by CPO GVD date to fund CPO costs.

6.2.3 £2.8 million on draw down of Phase 2a. This money will be ring-fenced to fund the re-location of council office accommodation.

## 7. CPO

*CPO Indemnity Agreement provisions and obligations to be discussed and agreed between the parties.*

7.1 Principles of the CPO are as follows:

- 7.1.1 The CPO Authority will be DBC and this should be reflected in the DA.
- 7.1.2 A CPO Indemnity Agreement will be entered into by the parties which will be appended to the DA and will indemnify the Agencies for all ancillary and acquisition costs it incurs.
- 7.1.3 Within **X** months of the drawdown of Phase 1 land, the Council will commence the CPO process subject to there being a viable scheme.
- 7.1.4 The Council will need to retain its statutory discretion as to whether there is a compelling case in the public interest to proceed with the making of an order.

## 8. **INNOVATION CENTRE**

- 8.1 Within the commercial phase an area of land should be made available to the Agencies for up to 2,787 square meter (30,000 sq ft) commercial building and associated infrastructure, for which no land value will be required by the Developer.
- 8.2 The developer will only make the land available subject to the proposed development offering a suitable and proper contribution to the shared infrastructure and enabling works/costs; and will not prejudice the deliver of the overall schemes and its viability. Approval from the developer would not be unreasonably withheld.

## 9. **ALLOTMENTS**

- 9.1 There is an obligation on the Agencies to maintain vacant possession which is acceptable. The council will act reasonably to maintain the condition of the allotments in relation to fly tipping and similar incidents.

## 10. **COMMITTEE**

- 10.1 The voting rights on the Committee will be held by the council and HCA with 1.5 decision making votes each to ensure there will be 6 votes remaining on the Committee. One representative from each of the Parties comprising the Developers shall continue to hold together 3 votes.

## 11. **ADDITIONAL PUBLIC SECTOR FUNDING**

- 11.1 If additional public sector funding is secured and expended the Agencies will require a priority return from the Development Trust Account to reflect the additional investment.

## 12. **CONTRACT AWARD**

- 12.1 Pre-Condition identifying that on completion, a Contract Award Notice will be published.

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