



DATED

2012

DEVELOPMENT AGREEMENT

relating to

**NORTH HERTFORDSHIRE MUSEUM AND HITCHIN TOWN
HALL**

between

NORTH HERTFORDSHIRE DISTRICT COUNCIL

and

HITCHIN TOWN HALL LIMITED

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PARTIES

- (1) NORTH HERTFORDSHIRE DISTRICT COUNCIL of Council Offices, Gernon Road, Letchworth, SG6 3JF (**Council**).
- (2) HITCHIN TOWN HALL LIMITED a charity incorporated and registered in England and Wales with company number (07974116) whose registered office is at 13 Bancroft, Hitchin, Hertfordshire, SG5 1JQ and whose registered Charity No. is(**HTH Limited**).

BACKGROUND

- (A) The Council owns the Building. As to that part of the Building comprising the Trust Property the Council holds that property as sole trustee for the Trust.

It is intended that simultaneously with this Agreement HTH Limited shall enter into the Option to purchase 14 Brand Street with vacant possession from

- (C) The Council has agreed to work with HTH Limited in order to progress a scheme to refurbish the Building and part of 14 Brand Street to create the New Site from which the Council will operate a district museum and HTH Limited will operate a community facility.
- (D) The Planning Permissions for the Development have been obtained.
- (E) HTH Limited is to contribute the HTH Limited Contribution to the Development by way of:
 - (a) one or more direct payments to the Building Contractor; and
 - (b) the completion of the Tenant's Works.

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

- (F) The objectives for entering into this Agreement are to provide:
 - (a) a North Hertfordshire District-wide museum; and
 - (b) to establish and retain Hitchin Town Hall as a first rate community facility to ensure compliance with the underpinning principles of:
 - (i) the Trust Objectives; and
 - (ii) The HTH Limited Objectives.
- (G) The Council enters into this Agreement pursuant to section 111 and section 123 of the Local Government Act 1972, section 1 of the Localism Act 2011 having regard to the Council's Decision Making Background and pursuant to a final decision of the Council made on []

- (H) The Trust enters into this Agreement pursuant to a decision of the Cabinet Subcommittee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) made on []
- (I) HTH Limited enters into this Agreement pursuant to board resolution of HTH Limited passed on [].
- (J) The target date for completion of the Development is [31 March 2014] however the Parties acknowledge that there are factors outside of either Party's control which may result in the Development not being complete by this date.

AGREED TERMS

1. INTERPRETATION

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

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

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

Architect: [] or such other person as may be appointed as a replacement architect from time to time

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

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

Building Contract: a building contract for the Development

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

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

CDM Co-ordinator: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement for the time being by the Council, to be the CDM Co-ordinator for the purposes of the Development and the CDM Regulations.

Effective Date : is the date defined in clause 3.1

Effective Longstop Date: [30 June 2013]

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

FBE : Futurebuilders England Limited (registered company number 05066676)

FBE 14 Brand Street Charge: the legal charge over 14 Brand Street to be entered into between HTH Limited (as chargor) and FBE (as chargee) on or after the date of this Agreement

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

HTH Limited Development Requirements: the development requirements in relation to the Building as are specified in Annex 6

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

HTH Limited Objectives: to manage Hitchin Town Hall as a social enterprise to meet the social, recreational, cultural and educational needs of the inhabitants of Hitchin, Hertfordshire and its surrounding area, and to use the Hall for any other purpose for the benefit of the inhabitants of Hitchin, Hertfordshire and its surrounding area as the directors of Hitchin Town Hall Limited shall see fit

HTH Limited's Solicitor: [REDACTED]
[REDACTED] or such other firm of solicitors for the time being that may be notified in writing by HTH Limited to the Council's Solicitor

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

Lease: the lease of the Hall in the form of the draft annexed to this Agreement at Annex 2 or as amended in accordance with Clause 4.4 of this Agreement.

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

Liaison Process: the process referred to in Clause 14.2 of this Agreement

Longstop Date: TBC

Management Agreement: a community use and management agreement to be entered into simultaneously with the grant of the Lease between the Council and HTH Limited in the form of the draft at Annex 3 or as amended in accordance with Clause 4.4 of this Agreement.

M&E Engineer: the mechanical and electrical engineer appointed by the Council, the Architect or the Building Contractor in relation to this Agreement and the Building Contract or such other person appointed as a replacement mechanical and electrical engineer

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

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

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

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

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

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

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

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

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

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

Site Plan: means the plan attached to this lease and marked as the site plan

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

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

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

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

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

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

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

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

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

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

14 Brand Street: the freehold property at 14 Brand Street, Hitchin shown edged [X] on plan [X] and forming part of registered title number HD512543

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal responsibility).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment.

- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule.
- 1.13 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Unless this Agreement otherwise expressly provides, a reference to the **Building, 14 Brand Street, the Hall, the New Site** or the **Development** is to the whole and any part of it.
- 1.15 Any reference to the Council's **consent** or **approval** being required is to a consent or approval in writing which must be obtained by HTH Limited before the relevant act is taken or event occurs.
- 1.16 Any references to the rights or obligations of the Trust under this Agreement are to the Council acting in its capacity as sole trustee of the Trust.
- 1.17 Any reference to the Trust's **consent** or **approval** being required is to a consent or approval in writing which must be obtained by HTH Limited before the relevant act is taken or event occurs.

2. COMMENCEMENT

- 2.1 This Agreement comes into force on the date that appears first on page 1 except for clause 4 and the Schedules referred to therein which come into force on the Effective Date.
- 2.2 On the date of this Agreement the Council shall appoint the Architect.
- 2.3 On the date of this Agreement HTH Limited shall complete the charge referred to at clause 10.2 below as a requirement of FBE to advance the HTH Limited Contribution to HTH Limited.

3. EFFECTIVE DATE

- 3.1 The Effective Date is the next Working Day after the Council serves notice on HTH Limited confirming that the Development Pre-condition has been satisfied
- 3.2 The Development Pre-condition is that the Council has contractually appointed the Building Contractor.

4. AGREEMENT

- 4.1 On or before the Effective Date HTH Limited shall exercise the Option and complete the purchase of 14 Brand Street and shall serve notice on the Council confirming completion of its acquisition of 14 Brand Street.
- 4.2 On the Development Commencement Date the Council shall commence the Development on the terms set out in Schedule 2.
- 4.3 HTH Limited hereby grants to the Council licence to enter 14 Brand Street from the Development Commencement Date to execute the Works (including the demolition of the building thereon) and any variation of the Works permitted under this Agreement provided that the Council shall use reasonable endeavours to ensure that the Building Contractor causes the minimum of disturbance to the owners and occupiers of 15 Brand Street Hitchin and complies with the terms of any party wall agreement relating thereto.
- 4.4 During the Development Period the Council and HTH Limited shall use the Liaison Process to review:
- (a) the Management Agreement; and
 - (b) the Lease; and
 - (c) the plans to be annexed to the Lease
- and shall agree such amendments to each document as are strictly necessary to take account of any differences between the envisaged Development and the final design and construction of the Development
- 4.5 No later than 10 Working Days after the issue of the Certificate of Practical Completion HTH Limited shall transfer 14 Brand Street to the Trust on the terms set out in Schedule 1. No purchase price or deposit shall be payable by the Council in respect of 14 Brand Street.
- 4.6 Subject to all of the Lease pre-conditions defined in clause 4.7 being satisfied on the terms of this Agreement, on the Lease Completion Date:

- (a) the Council shall grant to HTH Limited and HTH Limited shall accept from the Council the Lease on the terms set out in Schedule 3;
- (b) the Council and HTH Limited shall enter into the Management Agreement; and

4.7 The Lease Pre-conditions are:

- (a) that there has been at least one annual advertisement to the beneficiaries of HTH Limited in accordance with clause 10(6) of the articles of association of HTH Limited and there has been at least one AGM of HTH Limited following such advertisement
- (b) HTH Limited has paid £490,000.00 (four hundred and ninety thousand pounds) of the HTH Limited Contribution to the Building Contractor
- (c) 14 Brand Street has been transferred to the Trust in accordance with clause 4.5 of this Agreement

4.8 If the Collateral Warranties are procured by the Architect on behalf of the Council in accordance with clause 5.1(c) then the Council shall procure delivery to HTH Limited of the Collateral Warranties within two months of the Practical Completion Date.

5. OBLIGATIONS ON THE COUNCIL

5.1 The Council hereby agrees with HTH Limited :

- (a) to insure and keep the Building insured for its full reinstatement value against such of the Insured Risks as are covered by the Council's block insurance policy from the date of this Agreement until the Lease Completion Date
- (b) to use its reasonable endeavours to contractually appoint the Building Contractor in accordance with the Contract Procurement Rules and the Public Contracts Regulations 2006 before the Effective Longstop Date PROVIDED that the Council shall not be required to make any appointment pursuant to this clause other than to a contractor who has agreed to work within the Acceptable Contractor Terms and whose tender for carrying out the Development does not exceed the Budget
- (c) to use its reasonable endeavours to procure via the Architect the inclusion by the Building Contractor of the Collateral Warranties within the Budget
- (d) to use its reasonable endeavours to procure via the Building Contract that HTH Limited may have access to the Café not less than 8 weeks prior to the Architect's estimate of the Practical Completion Date to carry out the Tenant's Works
- (e) to use its reasonable endeavours to agree with HTH Limited any amendments to the documentation required in accordance with clause 4.4 before the Lease Completion Date.

- (f) to consult with HTH Limited in accordance with the Liaison Process regarding proposed alterations to the Approved Documents at any time after the commencement of the tender process

6. OBLIGATIONS ON HTH LIMITED

6.1 HTH Limited hereby agrees with the Council :

- (a) to insure and keep 14 Brand Street insured for its full reinstatement value against the Insured Risks and any other risks which the Council reasonably requires from the date of HTH Limited's acquisition thereof until the date on which the Council commences demolition of 14 Brand Street under the licence granted at clause 4.3 of this Agreement.
- (b) not to create any charge or encumbrances over 14 Brand Street from the date of this Agreement until the Transfer Date other than the FBE 14 Brand Street Charge and the fixed charge referred to in Clause 10.2 below.
- (c) to use its reasonable endeavours to agree with the Council any amendments to the documentation required in accordance with clause 4.4 before the Lease Completion Date.
- (d) as soon as reasonably practicable after the date of this Agreement at its own expense to prepare in duplicate and submit to the Council for approval plans and specifications for the Tenant's Works (such approval not to be unreasonably withheld or delayed)
- (e) to pay to the Building Contractor £490,000 (four hundred and ninety thousand pounds) of the HTH Limited Contribution on demand at any time after the Certificate of Practical Completion has been issued.
- (f) to apply that part of the HTH Limited Contribution not paid to the Building Contractor to the completion of the Tenant's Works.
- (g) not without the consent of the Council to agree to any amendments to the proposed TP1 relating to 14 Brand Street under the provisions of clause 7 of the Option.
- (h) to act reasonably in responding to any consultation from the Council regarding the Council's proposals to make any alteration to the Approved Documents after the commencement of the tender process.
- (i) if HTH Limited fails to pay the part of the HTH Limited Contribution due to the Building Contractor in full when it falls due then HTH Limited shall pay interest in addition to damages for losses incurred by the Council as a result of the delayed payment. The interest will be payable at the Contract Rate on any unpaid amount for the period that the sum falls due to the date of actual payment at the Contract Rate from the due date until the date of actual payment.
- (j) to indemnify the Council against all claims, costs, losses, demands, actions, proceedings and liability arising out of any breach or non-observance of HTH

Limited's obligations in this Agreement provided that the Council must give HTH Limited reasonable notice of any claim or demand and no admission of liability, settlement or compromise is to be made without the consent of HTH Limited.

7. COUNCIL'S DECISION MAKING

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

8. DEFAULT AND TERMINATION EVENTS

- 8.1 This Agreement shall immediately terminate if the Effective Date has not occurred by the Effective Longstop Date.
- 8.2 The Council may terminate this Agreement immediately by notice in writing to HTH Limited without prejudice to any other rights it may have if at any time before the appointment of the Building Contractor the Council becomes aware that the cost of the Development is to exceed the Budget.
- 8.3 HTH Limited may terminate the Agreement immediately by notice in writing to the Council without prejudice to any other rights it may have if the Council is in material breach of any of its obligations regarding the Development as set out in Schedule 2 of this Agreement.
- 8.4 If at any time HTH Limited is in material breach of this Agreement which is not remedied within 56 days (or such longer period as shall be reasonable) after the giving of notice by the Council to HTH Limited (and copies to FBE) requiring the breach to be remedied the Council may serve notice on HTH Limited ending this Agreement with immediate effect PROVIDED THAT:
- (a) The Council shall not exercise or seek any right of re-entry without first giving not less than 28 days' notice to FBE; and
 - (b) the Council shall at the request and cost of HTH Limited enter into a direct deed of covenant with FBE in such terms as the Council may reasonably require in which the Council covenants with FBE that the Council shall not

8.5 If this Agreement is terminated pursuant to this clause 8

- (a) the Agreement is terminated with immediate effect except that clause 12 and 13 will remain in full force notwithstanding termination of the Agreement
- (b) neither Party will have any further rights or obligations under the Agreement except that the termination of the Agreement will not affect either of the Party's rights in connection with any breach of this Agreement that occurred before the date of termination.

- (b) neither Party will have any further rights or obligations under the Agreement except that the termination of the Agreement will not affect either of the Party's rights in connection with any breach of this Agreement that occurred before the date of termination.

COUNCIL (10.5.12)

[REDACTED]

10. ALIENATION

- 10.1 HTH Limited may not assign, charge or part with its interest in this Agreement or any part of it nor agree to do save as expressly provided by this Agreement.
- 10.2 HTH Limited may charge the benefit of this Agreement by way of fixed charge to FBE on terms previously approved in writing by the Council (such approval not to be unreasonably withheld or delayed) [REDACTED]

11. ACTIONS AND PROCEEDINGS

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

12. DISPUTES

- 12.1 The Parties shall use reasonable endeavours to resolve any Dispute arising in relation to this Agreement without serving a Dispute Notice.
- 12.2 Either Party shall be entitled to serve a Dispute Notice in relation to any Dispute.
- 12.3 If the Parties do not agree upon the type of Specialist or the identity of the Specialist the question may be referred by either party to the president of the Royal Institution of Chartered Surveyors or his deputy who shall determine the question and/or nominate an appropriate Specialist.
- 12.4 Unless the Parties otherwise agree the reference to a Specialist shall be made to him as an arbitrator under the Arbitration Act 1996 but if the parties agree to the Specialist acting as an expert his decisions shall (save in the case of manifest error) be final and binding upon the parties.
- 12.5 The liability for paying all costs of referring a Dispute to a Specialist including costs connected with the appointment of the Specialist shall be decided by the Specialist.
- 12.6 If the Specialist should die or become unwilling to act or incapable of acting or it becomes apparent that for any reason he will be unable to determine the matter referred to him within a reasonable time after his appointment his appointment shall be terminated and either the Council or HTH Limited shall be entitled to apply for another specialist to be appointed.
- 12.7 As between the Council and HTH Limited the Certificate of Practical Completion shall (save in the case of manifest error) be final and binding and shall not be referred to a Specialist.

13. FREEDOM OF INFORMATION

- 13.1 The Parties shall fully co-operate with and assist each other in complying with their respective obligations under the Freedom of Information Act 2000 (the "FOI").
 - (a) Where a Party receives a request for information pursuant to the provisions of the FOI (a "Request for Information") in relation to information which it is holding on behalf of the other Party, it shall:
 - (i) transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within 2 Working Days after receipt of the Request for Information;
 - (ii) provide the other Party with a copy of all information in its possession or power in the form that the other Party requires within 5 Working Days after receipt of the Request for Information; and

- (iii) provide all necessary assistance as reasonably requested by the other Party to respond to a Request for Information within the time for compliance set out in section 10 of the FOI.
- (b) Where any Party receives a Request for Information which relates to this Agreement (the "Receiving Party") it shall inform the other Party about the Request for Information as soon as practicable after receipt (and in any event within 2 Working Days after receiving such Request for Information) and the following provisions shall apply:
 - (i) where the other Party is holding information on behalf of the Receiving Party that relates to the Request for Information, a copy of such information in its possession or power shall be provided to the Receiving Party in the form specified by the Receiving Party within 8 Working Days after receiving a copy of the Request for Information;
 - (ii) if the other Party having taken account of any relevant guidance available from the Information Commissioner's website reasonably believes that any information subject to a Request for Information is exempt from the provisions for the FOI ("Exempt Information") it shall be entitled to notify the Receiving Party accordingly and, in the event that it does so, shall specify in such notification the reasons why it considers such information to be Exempt Information; and
 - (iii) the Receiving Party shall (acting reasonably and in good faith) consider the reasons set out in any notification submitted pursuant to clause 13.1(b)(ii) and following such consideration the Receiving Party shall either:
 - (iv) withdraw its requirement for information to be provided pursuant to clause 13.1(b)(i); or
 - (v) confirm its request, in which case both Parties shall provide the information so requested within the time period set out in clause 13.1(b)(i)
- (c) The Receiving Party shall be responsible for determining at its absolute discretion (taking into account any notifications submitted pursuant to clause 13.1(b)(ii) whether the information:
 - (i) is Exempt Information; or
 - (ii) is to be disclosed in response to a Request for Information.
- (d) If the Receiving Party determines that information (including confidential information) must be disclosed pursuant to a Request for Information, it shall notify the other Party of that decision at least 2 Working Days before disclosure.
- (e) Any notification given under clause 13.1(b)(ii) shall be given within 5 Working Days after the date on which it receives the request from the Receiving Party.

- (f) In the event that any Party fails to submit a notification in accordance with clause 13.1(b)(ii) or fails to notify the Receiving Party by the date specified in clause 13.1(e) the Party failing to submit any notification shall be deemed to have concluded that the information requested is not Exempt Information and accordingly shall, where applicable, supply such information in accordance with clause 13.1(b)(i)
- 13.2 The Parties' obligations in this clause 13 shall be without prejudice to any other rights of the other Party under this Agreement or at law and shall continue after the expiry or early determination of this Agreement without limit in point of time.
- 14. LIAISON ARRANGEMENTS**
- 14.1 The Council will project manage the Development in accordance with the diagram appearing at Annex 5 to ensure HTH Limited has appropriate input into the management of the Development.
- 14.2 Where any matter in this Agreement falls to be determined by the Liaison Process then:
- (a) if the matter relates to negotiation or renegotiation of any of the documents annexed to this Agreement, it shall be referred to the negotiating team detailed in Annex 5;
 - (b) if the matter relates to design and construction of the Development, it shall be referred to the design and construction project team detailed in Annex 5; and
 - (c) if the matter relates to operational matters that will take effect after completion of the Development, it shall be referred to the operational project team detailed in Annex 5.
- 15. ENTIRE AGREEMENT**
- 15.1 This Agreement and the documents annexed to it constitute the entire agreement and understanding of the parties and supersede any previous agreement between them relating to the subject matter of this Agreement.
- 15.2 Each Party acknowledges and agrees that in entering into this Agreement, it does not rely on and will have no remedy in respect of any statement, representation, warranty, collateral agreement or other assurance (whether made negligently or innocently) of any person (whether party to this Agreement or not) other than:
- (a) as expressly set out in this Agreement or the documents annexed to it; or
 - (b) in any written replies which the other Party's solicitor has given to any written enquiries raised before the date of this Agreement.

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. NOTICES

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

(a) Council: The Corporate Legal Manager, Council Offices, Gernon Road, Letchworth, Hertfordshire, SG6 3JF

(b) HTH Limited: [REDACTED]

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

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

- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
- (b) if sent by pre-paid first class recorded delivery, at 9.00 am on the second Working Day after posting; or

- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

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

17.4 The provisions of this clause 17 shall not apply to the service of any proceedings or other documents in any legal action.

18. VALUE ADDED TAX

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

19. NO PARTNERSHIP

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

20. THIRD PARTY RIGHTS

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

21. GOVERNING LAW

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

22. TRUST LAND

22.1 The Parties acknowledge that:

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

[REDACTED]

[REDACTED]

[REDACTED]

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

Schedule 1 Transfer of 14 Brand Street

1. CONDITIONS

1.1. The Part 1 Conditions are incorporated in this schedule so far as they:

- (a) apply to a sale by private treaty;
- (b) are not inconsistent with the other clauses in this Schedule; and
- (c) have not been modified or excluded by any of the other clauses in this Schedule

1.2. The Part 2 Conditions are not incorporated into this schedule.

1.3. In interpreting the Conditions HTH Limited shall be the Seller, the Trust shall be the Buyer and 14 Brand Street shall be the Property.

1.4. Condition 1.1.4(a) does not apply to this schedule.

1.5. Condition 1.1.1(e) is amended so that reference to the contract rate in Condition 1.1.1(e) refers to the Contract Rate as defined in this Agreement.

2. VACANT POSSESSION

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

3. TITLE GUARANTEE

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

4. MATTERS AFFECTING THE PROPERTY

4.1. HTH will transfer 14 Brand Street to the Trust free from the FBE 14 Brand Street Legal Charge and free from encumbrances other than

- (a) any matters, (other than the FBE 14 Brand Street Charge) contained or referred to in the entries or records made in registers maintained by [HM Land Registry as at [DATE AND TIME OF OFFICIAL COPIES] under title number

[NUMBER]] [and] [the Land Charges Department of HM Land Registry as at the [DATE OF SEARCH]];

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

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

5. TRANSFER

The transfer to the Trust will be:

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

Schedule 2 The Development

1. APPROVED DOCUMENTS

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

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

2. REQUISITE CONSENTS

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

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

the Council shall negotiate with the third party for its grant. If necessary HTH Limited shall at the expense of the Council enter into any requisite deed or agreement with the relevant third party subject to the Council and HTH Limited approving its terms.

3. PROFESSIONAL TEAM

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

4. DEVELOPMENT AND BUILDING CONTRACT

The Council shall once such of the Requisite Consents have been obtained so as to enable the Works to commence, begin the Development. The Council shall forthwith after completion of the Building Contract provide a certified copy thereof to HTH Limited.

5. DEVELOPMENT OBLIGATIONS

5.1. The Council shall subject to HTH Limited complying with its obligations under clause 6.1(e) of this Agreement use its reasonable endeavours to procure the carrying out of and completion of the Development on or before the Longstop Date.

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

- (a) diligently, in a good and workmanlike manner and in accordance with good building practice;
- (b) using only good quality materials and well-maintained plant;
- (c) in accordance with this Agreement, the Approved Documents, the Planning Permission and the Requisite Consents;
- (d) in accordance with all statutory or other legal requirements and the recommendations or requirements of the local authority or statutory undertakings;
- (e) in compliance with all relevant British Standards, codes of practices and good building practice;
- (f) by selecting and using materials so as to avoid hazards to the health and safety of any person and to ensure the long term integrity of the Development;

- (g) in accordance with all covenants, stipulations, rights and conditions affecting the New Site; and
- (h) so that on the Practical Completion Date the Development shall be fit for its intended purpose as contemplated by the Planning Permission.

6. TENANTS WORKS

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

- 6.7. HTH Limited must immediately make good, to the reasonable satisfaction of the Council, any damage (including decorative damage) to any land or building or any plant and machinery which is caused by carrying out the Tenant's Works.
- 6.8. HTH Limited shall liaise with the CDM Coordinator in respect of the Tenant's Works and shall carry out the Tenant's Works in accordance with the CDM Regulations.
- 6.9. The tenant covenants in the Lease will extend to the Tenant's Works and apply to the property demised by the Lease as altered by those works.

7. THE CDM REGULATIONS

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

8. INSPECTION

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

- (a) not give any instructions or make any representations directly to the Building Contractor or Professional Team; and
- (b) comply with the Council and Building Contractor's health and safety and site rules but HTH Limited shall be entitled to make representations to the Council in accordance with the Liaison Process.

9. INSURANCE

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

10. PRACTICAL COMPLETION

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

11. DEFECTS LIABILITY

- 11.1. During the Defects Liability Period the Council accompanied by a representative of HTH Limited shall inspect or procure such inspections of the Works as are reasonably necessary or appropriate to identify any defects, shrinkages or other faults in the Works.
- 11.2. The Council shall prepare a list of all defects, shrinkages or other faults in the Works (incorporating any defects, shrinkages or other faults in the Works notified to it by HTH Limited) and give it to the Building Contractor within the time limits specified by the Building Contract.
- 11.3. The Council shall ensure that the Building Contractor's obligations to remedy defects, shrinkages or other faults in the Works during the Defects Liability Period are enforced and that all such defects, shrinkages or other faults in the Works are remedied promptly in accordance with the Building Contract.

Schedule 3 – The Lease

1 CONDITIONS

1.1 The Part 1 Conditions are incorporated in this Schedule, in so far as they:

- (a) are applicable to the grant of a lease;
- (b) are not inconsistent with the other clauses in this Agreement; and
- (c) have not been modified or excluded by any of the other clauses in this Agreement.

1.2 The Part 2 Conditions are not incorporated in this Schedule.

1.3 In interpreting the Conditions the Council shall be the Seller, HTH Limited shall be the Buyer and the Hall shall be the Property.

1.4 Condition 9.1.1 is varied to read "If any plan or statement in the contract or in written replies which the seller's conveyancer has given to any written enquiries raised by the buyer's conveyancer before the date of this contract, is or was misleading or inaccurate due to any error or omission, the remedies available are as follows."

1.5 The following Part 1 Conditions do not apply to this Agreement:

- (a) Conditions 1.1.4(a), 1.2, 1.3, 1.4 and 1.5;
- (b) Condition 2.2;
- (c) Conditions 3.1.1, 3.1.2, 3.1.3 and 3.3;
- (d) Conditions 6.1, 6.2, 6.3, 6.4.2 and 6.6.2;
- (e) Conditions 7.1.2, 7.1.3 and 7.1.4(b);
- (f) Condition 9.3; and
- (g) Conditions 10.2.4 and 10.3.

2 CONDITION OF THE HALL

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

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

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

3 VACANT POSSESSION

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

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

4 DEDUCING TITLE

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

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

5 MATTERS AFFECTING THE PROPERTY

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

- (a) any matters, other than financial charges, contained or referred to in the entries or records made in registers maintained by the Land Registry as at [DATE AND TIME OF OFFICIAL COPIES] under title number [NUMBER]] [and] [the Land Charges Department of HM Land Registry as at [DATE OF SEARCH];]
- (b) all matters contained or referred to in the Lease;
- (c) any matters discoverable by inspection of the New Site in so far as it affects the Hall before the date of this Agreement;
- (d) any matters which the Council does not and could not reasonably know about;
- (e) any matters, other than financial charges, disclosed or which would have been disclosed by the searches and enquiries that a prudent tenant would have made before entering into this Agreement;
- (f) public requirements;

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

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

6 COMPLETION

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

6.2 Completion will take place on the Lease Completion Date.

7 ASSIGNMENT

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

Annex 1 Part 1 - The TR1

Annex 1 Part 2 – The TP1

Annex 2 – The Lease

Annex 3 – The Management Agreement

Annex 4 – The Option

Annex 5 – Project Management

Annex 6 – HTH Limited Development Requirements

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

.....
Authorised Signatory

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

.....
Director

.....
Director